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Government of India  
Ministry of Finance  
Department of Expenditure  
Public Procurement Division

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Room.No.516, Lok Nayak Bhawan,  
New Delhi.  
Dated: 22<sup>nd</sup> August,2016.

### NOTICE

Subject: - **Revision of Manual on Policies and Procedures for Purchase of Goods**  
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The Manuals on Policies and Procedures for Purchase of Goods, Works and Consultancy were issued by this Department in 2006. These Manuals were prepared in conformity with the General Financial Rules, 2005 and contained broad generic Guidelines. To suit their local/specialized needs, Ministries / Departments were to supplement these manuals by issuing Detailed Operating Instructions; Checklists and customized formats to serve as practical instructions.

2. It has been now decided to revise these Manuals and the copy of the revised Draft Manual for Purchase of Goods is available on the website [www.finmin.nic.in](http://www.finmin.nic.in) → Department → Expenditure → Procurement Policy Division. It has been also decided to initiate stakeholders' consultation on the Draft Manual. In this context, Individuals, Industries Bodies and all other stakeholders are requested to review the provisions of the Draft Manual on Policies and Procedures of Goods and send their suggestions / comments at e-mail I.D. [sanjay.aggarwal68@nic.in](mailto:sanjay.aggarwal68@nic.in), [girish.bhatnagar@gmail.com](mailto:girish.bhatnagar@gmail.com) with copy to [vivek.joshi@nic.in](mailto:vivek.joshi@nic.in) within 15 days of the publication of this Notice in the website of Ministry i.e. **latest by 7<sup>th</sup> September, 2016**. The title of the e-mail must mention the subject as given above. Ministries/Departments are being separately requested to send their suggestions/comments in this regard. The suggestion should be given only in the following format:

Para No and Page Number	Provisions in Manual on Policies & Procedures of Goods.	Proposed changes	Justification and reasons for Suggestions/Comments.
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(Vinayak T Likhari)  
Under Secretary (PPD)  
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*Procurement Policy Division*

*Department of Expenditure, Ministry of Finance, Government of India*

# ***Manual on Policies and Procedures***

***For Procurement of Goods***

*Beta Draft*

**15-08-2016**

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**For Official Use Only**

**Procurement Policy Division**

**Department of Expenditure, Ministry of Finance, Government of India**

# **Manual on Policies and Procedures**

## **For Procurement of Goods**

**Beta Draft**

**15-Aug-16**

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### **Disclaimer**

*The contents of this manual are for internal and official use by the staff and officers of the Ministries and Departments of the Government of India and other bodies under it (to whom the Public Procurement Guidelines apply) for conducting public procurement processes.*

*This document is neither addressed to nor meant for any external use by such staff/officers or any Bidder /Supplier /contractor /service provider to such procuring entities. Relationships of Bidders /Suppliers / contractors /service providers with such procuring entities are solely governed by the relevant bid/ contract/registration document(s) and this manual shall have no locus standii in such relationships.*

*No part of this document may be quoted or referred to or produced in any Disciplinary, legal or dispute resolution or grievance redressal proceedings.*

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## **Preamble**

Every Government organization procures a wide variety of goods and services and executes works to perform the duties and responsibilities assigned to it. With a view to reduce scope for subjectivity and to improve objectivity and transparency in decision making, Government had prepared a set of three Manuals on Policies and Procedure for Procurement of Goods, Works and hiring of Consultants, in 2006 in conformity with the applicable directives contained in the new General Financial Rules, 2005. These Manuals laid out clear guidelines for Public Procurement in tune with the imperatives of a growing and liberalized economy. It was the intention to review these Manuals after some time. It has now been decided to undertake this exercise.

Government held a wide ranging consultation with Stakeholders and other interested agencies to map areas requiring improvement in the Manuals. Based on such consultations and feedback, these Manuals have been revised in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability and also taking into account the developments in the economy and the need to introduce quality in public procurement. Efforts have been made to cover all major aspects of procurement in these Manuals in a user-friendly manner.

The draft Manuals would be circulated to all Ministries / Departments, and their suggestions would be duly considered for making further changes.

Over a period of time, various Ministries may revise their policies/ rules/ guidelines/ documents, which have been relied upon in preparing this manual (e.g. GFR, DFPR, Integrity Pact, INCOTERMS etc or from Ministry of MSME; Ministry of Chemicals and Fertilizers; Ministry of Environment, Forest and Climate Change; Ministry of Health and Family Welfare , DGS&D, NIC, CVC, etc.). Therefore, with flux of time, the latest version of such basic documents may also be ascertained from the relevant official website.

Manuals issued by this Ministry are to be taken as generic guidelines, which have to be necessarily broad in nature. Ministries / Departments are advised to supplement these manuals to suit local/specialized needs, by issuing their own detailed Manuals (including customized formats); Standard Bidding Documents; Schedule of Procurement Powers and Checklists to serve as practical instructions for their officers and to ensure completeness of examination of cases.

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## ***Abbreviations and Acronyms***

AAO	Assistant Accounts Officer	CST	Central Sales Tax
ACASH	Association of Corporations and Apex Societies of Handlooms	CVC	Central Vigilance Commission
AMC	Annual Maintenance Contract	CVO	Chief Vigilance Officer
AITB	Additional Instructions to Bidders (may in some instances be called Bid Data Sheet – BDS or Tender Information Sheet -TIS)	DDO	Direct Demanding Officer (for RCs)
DFPR	Delegation of Financial Power, 1978	DGS&D	Directorate General of Supplies and Disposals
AO	Assistant Officer	DIC	District Industries Centre
BEE	Bureau of Energy Efficiency	DMEP	Domestically Manufactured Electronic Products
BG	Bank Guarantee	DPSE	Delhi Special Police Establishment
BIS	Bureau of Indian Standards	DSC	Digital Signature Certificate
BOC	Bid Opening Committee	ECS	Electronic Clearing System
BSV	Balance Sale Value	EMD	Earnest Money Deposit
C&AG	Comptroller and Auditor General (of India)	EoI	Expression of Interest (Tender)
CA	Competent Authority	EPM	Export Promotion and Marketing
CBI	Central Bureau of Investigation	ERV	Exchange Rate Variation
CFR	Cost and Freight	EXIM	Export Import (Policy)
CHA	Custom House Agent	FA (&CAO)	Financial Adviser (and Chief Accounts Officer)
CIF	Cost Insurance and Freight	FAS	Free Alongside Ship
CIP	Carriage and Insurance Paid	FEMA	Foreign Exchange Management Act
CIPP	Code of Integrity for Public Procurement	FM	Force Majeure
COTS	Commercially Off The Shelf (Items)	FOB	Free On Board
CPO	Central Purchasing Organizations	FOR	Free On Rail
CPPP	Central Public Procurement Portal	FOT	Free On Truck

GCC	General Conditions of Contract	LOA	Letter (Notification) of Award also called Acceptance of Tender (A/T)
GCN	Goods Consignment Note (for Road Consignments)	LPP	Last Purchase Price
GFR	General and Financial Rules, 2005	LTE	Limited Tender Enquiry
GoI	Government of India	MIS	Management Information System
GRC	Grievance Redressal Committee	MRP	Maximum Retail Price
GRO	Grievance Redressal Office	MSE	Micro and Small Enterprise
GTE	Global Tender Enquiry	MSME	Micro Small and Medium Enterprises
HOD	Head of the Department	MSTC	Metal Scrap Trading Corporation
IEM	Independent External Monitor	SBD	Standard Bidding Document
INCOTERMS	International Commercial Terms	NEFT	National Electronic Funds Transfer
IP	Integrity Pact	NIC	National Informatics Centre
IRDA	Insurance Regulatory and Development Authority	NIT	Notice Inviting Tender
ISI	Indian Standards Institute	NSIC	National Small Industries Corporation
ISO	International Standards Organization	NTH	National Test House
IT	Information Technology	OEM	Original Equipment Manufacturer
ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)	OTE	Open Tender Enquiry
ITJ	Indian Trade Journal	PPMSE	Procurement Preference Policy for Micro and Small Enterprises, 2012
KVIC	Khadi and Village Industries Commission	PAC	Proprietary Article Certificate
KPI	Key Performance Indicators	PBG	Performance Bank Guarantee, also see SD
L1	Lowest Bidder	PO	Purchase Order (or Supply Order)
LC	Letter of Credit	PPP	Public Private Partnership
LD	Liquidated Damages	PQB	Pre-qualification Bidding
		PQC	Pre-qualification Criterion
		PR	Purchase Requisition/ Indent

PSU	Public Sector Undertaking	SoPP	Schedule of Procurement Powers
PVC	Price Variation Clause	SSI	Small Scale Industry
QA	Quality Assurance	STE	Single Tender Enquiry
RBI	Reserve Bank of India	TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC)
RC	Rate Contract (or Framework Contract FC)	TLD	Token Liquidated Damages
(S)RfP	(Standard) Request for Proposals (Document)	ToR	Terms of Reference
RIC	Regional Industries Centre	TS	Technical Specification
RR	Railway Receipt	UCP/ UCPDC	Uniform Customs and Practice for Documentary Credits
RTGS	Real Time Gross Settlement	UNCITRAL	United Nations Commission on International Trade Law
RTI	Right to Information	URDG	Uniform Rules for Demand Guarantees (current version is URDG 758)
SBD	Standard Bidding Document	VAT	Value Added Tax
SPC	Spot Purchase Committee	VfM	(Best) Value for Money
SC	Survey Committee	WDO	Women's Development Organization
SCC	Special Conditions of Contract	WOL	Whole of Life (Cost) or Total Cost of Ownership TCO
SD	Security Deposit, also see PBG		
SFMS	Secure Financial Messaging System		
SLTE	Special Limited Tender (Enquiry)		



## **Procurement Glossary**

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires <sup>1</sup>:

- i). "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
- ii). "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with a procuring entity;
- iii). "(Standard) Bid(ding) documents" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RfP documents in certain contexts) means a document issued by the procuring entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) Bidding Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- iv). "Bidder registration document" means a document issued by a procuring entity, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
- v). "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;
- vi). "Central Public sector enterprise" means a body incorporated under the Companies Act or established under any other Act and in which the Central Government or a Central enterprise owns more than 50 per cent of the issued share capital;
- vii). "Central Purchase Organisation" means a procuring entity which is authorised by the Government of India by an order, made in this behalf, to make procurement for one or

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<sup>1</sup> The main preferred term is within the inverted commas. Alternative equivalent terms used in certain contexts , if any, are listed in the brackets. Text within brackets is not considered for sort-order of terms.

more procuring entities or to enter into rate contracts or framework agreements for procurement by other procuring entities. At present, the Director General of Supply and Disposals (DGS&D) is such an authority. However Government can authorise other Organisations for specific categories of materials;

- viii). "Consultancy services" means a one-off (that is, not repetitive and not routine) services, involving project specific intellectual and procedural processes using established technologies and methodologies but the outcomes – which are primarily of non-physical nature – may not be standardised and would vary from one consultant to another. It may include small works or supply of goods which are incidental or consequential to such services;
- ix). "e-Procurement" means the use of information and communication technology (specially the internet) by the procuring entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- x). "Goods" includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance;
- xi). "Indenter" ( or the term 'User (Department)' in certain contexts) means the entity and its officials initiating a procurement indent, that is, a request to the procuring entity to procure goods, works or services specified therein;
- xii). "Inventory" means any material, component or product that is held for use at a later time;
- xiii). "Invitation to (pre-)qualify" means a document including any amendment thereto published by the procuring entity inviting offers for pre-qualification from prospective bidders;
- xiv). "Invitation to register" means a document including any amendment thereto published by the procuring entity inviting offers for bidder registration from prospective bidders;

- xv). "Non-consultancy services" includes services of physical and procedural nature and are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied such as drilling, aerial photography, satellite imagery, mapping and similar operations. It may include small works or supply of goods which are incidental or consequential to such services;
- xvi). "Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the procuring entity, which informs the potential bidders that it intends to procure goods, services and/or works.;
- xvii). "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;
- xviii). "Pre-qualification document" means the document including any amendment thereto issued by a procuring entity, which sets out the terms and conditions of the pre-qualification bidding and includes the invitation to pre-qualify;
- xix). "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a procuring entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" shall be construed accordingly;
- xx). "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the procuring entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term "contract" will also include "rate contract" and "framework contract";
- xxi). '(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2005; Delegation of

Financial Power Rules, 1978 and any other regulation so declared by the Government);

iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and iv) Procuring Entity's Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);

xxii). "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;

xxiii). "Procuring authority" (including the term 'employer' or 'client' or 'buyer' or 'purchaser' in certain context and also the officer who finally approves as well as those officials and committee members who submit the facts/notes/reports for the approval for any decision) refers to all the officials from the Associated/ integrated Finance, technical departments and any other department, who are involved in one way or another, in various stages of the procurement process, starting from need assessment to the closure of contract;

xxiv). "Procuring entity" (including the term Procuring Entity and including Associated/ integrated Finance, technical departments, besides any other) means all the entities involved in one way or another, in various stages of the process, starting from need assessment to the closure of contract;

xxv). "Prospective bidder" means any person including a consortium (that is, association of several persons or firms or companies) likely or desirous to be a bidder;

xxvi). "Public Private Partnership" means an arrangement between the central, a statutory entity or any other government-owned entity, on one side, and a private sector entity, on the other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;

xxvii). "Rate contract " ( or the term 'framework agreement' in certain contexts) means an agreement between a Central Purchase Organisation or procuring entity with one or more bidders, valid for a specified period of time, which sets out terms and conditions

under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual procurement through competition or a predefined process allowing their revision without further competition;

xxviii). "Registering authority" means an authority which registers bidders for different categories of procurement.

xxix). "Registered Supplier" means any supplier who is on a list of registered suppliers of the procuring entity or a Central Purchase Organisation;

xxx). "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;

xxxi). "Service" means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a procuring entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf;

xxii). "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;

xxxiii). "Works" refer to any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for the purposes of roads, railway, airports, shipping-ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants.

(Adapted from: Public Procurement Bill, 2012)



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***Procurement Policy Division***

***Department of Expenditure, Ministry of Finance, Government of India***  
***Manual on Policies and Procedures***

***For Procurement of Goods***

## ***CHAPTERS***

Beta Draft

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# ***Chapter 1: Introduction – Policies and Principles***

## **1.1 Procurement Rules and Regulations; and this Manual**

Various ministries, departments, attached and subordinate offices, local urban bodies, public sector enterprises and other government (including autonomous) bodies (hereinafter referred as ‘Procuring Entities’) spend a sizeable amount of their budget on procurement of goods, works and services to discharge the duties and responsibilities assigned to them.

The Ministries / Departments have been delegated powers to make their own arrangements for procurement of goods under the Delegation of Financial Power Rules, which have to be exercised in conformity with the ‘Procurement Guidelines’ mentioned below.

To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of suppliers, there are statutory provisions; rules; financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government on the subject of public procurement (hereinafter referred as ‘Procurement Guidelines’) which provide framework for the public procurement system.

At the apex of the Statutory framework governing public procurement is Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Article 19 (1) (g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are major legislations governing contracts of sale/ purchase of goods in general. There are other mercantile laws (Arbitration and Conciliation Act, 1996; Competition Act, 2002; Information Technology Act, 2000 etc), which may be attracted in Public Procurement Transactions. There are in addition laws relating to Governance issues (Central Vigilance Commission Act, 2003; Delhi Special Police Establishment Act, 1946; Prevention of Corruption Act, 1988), which are applicable to Public Procurement also. There is no law exclusively governing public procurement.

However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2005, especially chapter 6; Delegation of Financial Powers Rules (DFPR); Government orders regarding product reservations or purchase preference or other facilities to sellers in Micro and Small Enterprises, Domestically Manufactured Electronic Products, Pharmaceutical Central Public Sector Enterprises, Khadi/ Handlooms goods, etc. and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.

Without purporting to be a comprehensive compendium of all such 'Procurement Guidelines', this Manual is intended to serve as a portal to enter this vast area and draw attention to basic norms and practices governing public procurement. Based on this Manual, individual 'Procuring Entities' are expected to issue more comprehensive and detailed Codes/ Manuals and Standard Bidding Documents (including Standard Request for Proposal Documents), tailored for their specific needs and circumstances. The Hierarchical relationship of these documents comprising the 'Procurement Guidelines' is shown in Annexure 1. This Procurement Manual for Goods is part of 'Procurement Guidelines' and must be followed for all procurements of goods to be undertaken by all 'Procuring Entities' unless specific relaxations are granted for certain class of Goods or 'Procuring Entities'.

## **1.2 Clarification, Amendments and Revision of this Manual**

For revision, interpretation, clarification and issues relating to this manual, the Procurement Policy Division, Department of Expenditure, Ministry of Finance would be the nodal authority.

## **1.3 Applicability of this Manual**

The term 'goods' used in this manual includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spare parts, instruments, machinery, equipment, industrial plants, vehicles, aircraft, ships, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other goods but excludes books, publications, periodicals, and so on, for a library, procured or otherwise acquired by a procuring entity.

Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance. What is unique about procurement of goods (as compared to services and works) is the ability to precisely describe the technical specification of the requirement.

The 'Procurement Entities' to which this manual along with rest of 'Procurement Guidelines' are applicable include ministries, departments, or a unit thereof, or an attached or subordinate offices/units; Central Public Sector Enterprises (CPSEs) or undertakings; any other body (including autonomous bodies) substantially owned or controlled by or receiving substantial financial assistance from the Central Government. These procurement guidelines would continue to apply if these procurement entities outsource the procurement process or bundle the procurement process with other contractual arrangements or utilise the services of procurement support agency or procurement agents to carry out the procurement on their behalf. But these procurement guidelines would not apply to procurements by these procuring entities for their own use (but not for purpose

of trading/ sale) from their subsidiary companies including Joint Ventures in which they have controlling share.

However by a general or special notification, the government may permit certain 'Procuring Entities' mentioned in sub-para above, considering unique conditions under which they operate, for all or certain categories of procurement, to adopt detailed approved guidelines for procurement, which may deviate in some aspects but conform with all other essential aspects of 'Procurement Guidelines'.

**For procurements financed by Loans/Grants extended by International Agencies:** The Articles of Agreement with the International Agencies, like the World Bank, Asian Development Bank etc. stipulate specific procurement procedures to be followed by the borrowers. The procurement procedures, as finalized and incorporated in the Agreements after consideration and approval of the Ministry of Finance are to be followed accordingly.

#### **1.4 Authorities competent to purchase goods and their Purchase Powers**

1.4.1 An authority which is competent to incur contingent expenditure may sanction the purchase of goods required for use in public service in accordance with Rule 21 and Rule 13 (3) Schedule V of the Delegation of Financial Rules, 1978, (DFPR – extracted in Annexure 2A and 2B) by following the 'Procurement Guidelines' described in this Manual. Each 'Procuring Entity' may issue a Schedule of Procurement Powers (SoPP) adding further detailing to the broad delegations in the DFPR, based on the assessment of Risk involved in different decisions/ approvals at various stages of Procurement Cycle. A suggested structure of such SoPP is enclosed as Annexure 2C.

1.4.2 **Purchase through a Central Purchase Organization:** Although adhoc procurement by DGS&D has been decentralised Departments/Organisations, who have not built-up their own infrastructure for purchase, can raise their demands on DGS&D for ad-hoc procurement with the approval of its Secretary (or an officer to whom such powers have been re-delegated). Similarly Indents may also be placed on other Canalized agencies authorised by the Government or other Government Ministries/ Departments, if mutually agreed.

#### **1.5 Basic Aims of Procurement – the Five Rs of Procurement**

In every procurement, public or private, the basic aim is to achieve just the right balance between costs and requirements concerning the following five parameters called the Five R's of procurement. The entire process of procurement (from the time the need for an item, facility or services is identified till the need is satisfied) is designed to achieve such a right balance.

**i). Right Quality**

Procurement aims to buy just the right quality that will suit the needs – no more and no less – with clear specification of the procuring entity's requirements, proper understanding of functional value and cost, understanding of the bidder's quality system and quality awareness. The concept of the right balance of quality can be further refined to the concept of utility/value (Please refer to para 1.7 below).

**ii). Right Quantity**

There are extra costs and systemic overheads involved with both procuring a requirement too frequently in small quantities or with buying large quantities and then storing them for prolonged use. Hence, the right quantity is procured (in appropriate size of contract) which balances extra costs associated with larger and smaller quantities.

**iii). Right Price**

It is not correct to aim at the cheapest material available. The price should be just right for the quality, quantity and other factors involved (or should not be abnormally low for a facility/works which could lead to a situation of non-performance or failure of contract). The concept of price can be refined further to take into account not only the initial price paid for the requirement but also other costs such as maintenance costs, operational costs and disposal costs (Also termed as life cycle costing - please also refer to para 1.7 below)

**iv). Right Time and Place**

If the material (or facility or services) is needed by an organisation in three months' time, it will be costly to procure it too late or too early. Similarly, if the vendor delivers the material in another city, extra time and money would be involved in transporting it to the actual place of requirement. An unrealistic time schedule for completion of a facility may lead to delays, claims and disputes.

**v). Right Source**

Similarly, the source (of supply) of the requirement (and engaging qualified and experienced firms) has to be just right for our needs. Buying a few packets of printer paper directly from a large manufacturer may not be the right strategy. On the other hand, if our requirements are very large, buying such requirements through dealers or middlemen may also not be right.

## **1.6 Refined Concepts of Cost and Value – Value for Money**

The concept of price or cost has been further refined into total cost of ownership and life cycle cost to take into account not only the initial acquisition cost but also cost of operation and disposal during the lifetime of the external resource procured. Similarly, the concept of quality is refined into

the concept of utility/ value. These two, taken together, are used to develop the concept of Value for Money (VfM, also called Best Value for Money in certain contexts). VfM means the effective, efficient, and economic use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes and/or life cycle costs, as appropriate. Price alone may not necessarily represent VfM. *In public procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications/ Terms of Reference (TOR); appropriate packaging/ slicing of requirement; selection of an appropriate mode of procurement and bidding system.* These advanced concepts are explained in *Appendix 1*.

## **1.7 Fundamental Principles of Public Procurement**

General Financial Rules, 2005 lay down the Fundamental Principles of Public Procurement. These principles and other additional obligations of procuring authorities in public procurement can be organised into five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

### **i). Transparency Principle**

All procuring authorities are responsible and accountable to ensure transparency, fairness, equality, competition and appeal rights. This involves simultaneous, symmetric and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the actual means, processes and time-limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), equal opportunities (absence of discrimination) in processes. In essence Transparency Principle also enjoins upon the Procuring Authorities to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared. As part of this principle, all procuring entities should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP).

### **ii). Professionalism Principle**

As per these synergic attributes, the procuring authorities have a responsibility and accountability to ensure professionalism, economy, efficiency, effectiveness and integrity in the procurement process. They must avoid wasteful, dilatory and improper practices violating the Code of integrity for Public Procurement (CIPP) mentioned in Chapter 3 of this manual. They should, at the same time, ensure

that the methodology adopted for procurement should not only be reasonable and appropriate for the cost and complexity but should also effectively achieve the planned objective of the procurement. As part of this principle, the government may prescribe professional standards and specify suitable training and certification requirements for officials dealing with procurement matters.

*In reference to the above two principles - Transparency and Professionalism Principle, It may be useful to refer to the following provisions in the General Financial Rules, 2005:*

**Rule 137. Fundamental principles of public buying :** *Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.*

*The procedure to be followed in making public procurement must conform to the following yardsticks:-*

- (i) the specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organizations. The specifications so worked out should meet the basic needs of the organization without including superfluous and non-essential features, which may result in unwarranted expenditure. Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;*
- (ii) offers should be invited following a fair, transparent and reasonable procedure;*
- (iii) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;*
- (iv) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;*
- (v) at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.*

### **iii). Broader Obligations Principle**

Over and above transparency and professionalism, the procuring authorities have also the responsibility and accountability to conduct public procurement in a manner to facilitate achievement of the broader objectives of the government - to the extent these are specifically included in the 'Procurement Guidelines':

- a) Preferential procurement from backward regions, weaker sections and MSEs, locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines'; and
- b) Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations, to the extent specifically included in the 'Procurement Guidelines'.
- c) Support to broader social policy and programme objectives of the government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines');
- d) Facilitating administrative goals of other departments of government (for example, ensuring tax or environmental compliance by participants, accessibility for People With Disabilities etc. to the extent specifically included in the 'Procurement Guidelines').

**iv). Extended Legal Responsibilities Principle**

Procuring authorities must fulfil additional legal obligations in public procurement, over and above mere conformity to the mercantile laws (which even private sector procurements have to comply with). The Constitution of India has certain provisions regarding fundamental rights and public procurement. Courts have, over a time, taking a broader view of Public Procurement as a function of 'State', interpreted these to extend the responsibility and accountability of public procurement Authorities. Courts in India thus exercise additional judicial review (beyond contractual issues) over public procurement in relation to the manner of decision making in respect of fundamental rights, fair play and legality. Similarly, procuring authorities have also the responsibility and accountability to comply with the laws relating to Governance Issues like Right to Information (RTI) Act and Prevention of Corruption Act, and so on. Details of such extrinsic legal obligations are given in Appendix 2.

**v). Public Accountability Principle**

Procuring authorities are accountable for all the above principles to several statutory and official bodies in the Country – the Legislature and its Committees, Central Vigilance Commission, Comptroller and Auditor General of India, Central Bureau of Investigations and so on—in addition to administrative accountability. As a result, each individual public procurement transaction is liable to be scrutinised independently, in isolation, besides judging the overall outcomes of procurement process over a period of time. Procuring authorities thus have responsibility and accountability for compliance of rules and procedures in each individual procurement transaction besides the

achievement of overall procurement outcomes. The procuring authority, at each stage of procurement, must therefore place on record, in precise terms, the considerations which weighed with it while making the procurement decision from need assessment to fulfilment of need. Such records must be preserved, retained in easily retrievable form and made available to such oversight agencies. The procuring entity shall therefore maintain and retain records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include:

- a) documents pertaining to determination of need for procurement;
- b) Description of the subject matter of the procurement;
- c) Statement of the reason for choice of a procurement method other than open competitive bidding;
- d) Documents relating to pre-qualification and registration of bidders, if applicable;
- e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
- f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
- g) Bids evaluated, and documents relating to their evaluation; and
- h) Complaint handling, correspondences with clients, consultants, banks.

## **1.8 Standards (Canons) of Financial Propriety**

Public Procurement like any other expenditure in Government must conform to the Standards (also called Canons) of Financial Propriety. It may be useful to refer to the relevant provisions in the General Financial Rules, 2005

***Rule 21. Standards of financial propriety:*** *Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers.*

*Among the principles on which emphasis is generally laid are the following:-*

*(i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.*

- (ii) *The expenditure should not be *prima facie* more than the occasion demands.*
- (iii) *No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.*
- (iv) *Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -*
  - (a) *a claim for the amount could be enforced in a Court of Law, or*
  - (b) *the expenditure is in pursuance of a recognized policy or custom.*
- (v) *The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.*

## 1.9 Public Procurement Infrastructure at the Centre

### i). Procurement Policy Division

Procurement Policy Division (PPD) in Department of Expenditure; Ministry of Finance has been created to encourage uniformity and harmonisation in public procurement processes by dissemination of best practices, provision of guidance, oversight and capacity building and issuing of procurement manuals. However Centralisation of procurement or involvement in procurement processes is not the intended purpose of creation of PPD.

### ii). Central Public Procurement Portal

Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the Central Public Procurement portal is to provide a single point access to the information on procurements made across various Ministries and the Departments. The CPPP has e-publishing and e-procurement modules. It is mandatory for all Ministries / Departments of the Central Government, Central Public Sector Enterprises (CPSEs) and Autonomous and Statutory Bodies to publish on the CPPP all their tender enquiries and information about the resulting contracts. CPPP provides access to information such as documents relating to pre-qualification, Bidders' registration, Bidding documents; details of bidders, their pre-qualification, registration, exclusions/ debarments; decisions taken regarding prequalification and selection of successful bid. It is also now mandatory to implement end-to-end eProcurement for all procurements of more than Rs 2 Lakhs either through CPPP portal or any other suitable portal.

### iii). Central Procurement Organisation (CPO)

Director General of Supplies and Disposals (DGS&D), the central purchase organisation (CPO) of the government of India, headed by a director general, is an attached office under ministry of commerce. The main function of DGSD is to enter into Rate Contracts for common user items for use of various Government Organisations. Although adhoc procurement by DGS&D has been decentralised, it still does adhoc procurement for a few Departments/Organisations, on their request. DGS&D has also developed an online Government e-Market Place (GeM) for common use goods and services to ensure better transparency and higher efficiency. It also carries out inspections of Jute Bags.

## 1.10 Product Reservation and Preferential/Mandatory Purchase from certain sources

**Note:** Before considering any Purchase Preference/reservation mentioned below, the Procuring Entity should check the latest directives in this regard for necessary action. Product Reservation/Purchase Preference provision shall invariably be part of the Notice Inviting Tender (NIT) and Instructions to Bidders (ITB).

### 1.10.1 Reservation of Procurement of certain class of Products from certain agencies- Khadi Goods/Handloom Textiles

The Central Government has reserved<sup>2</sup> all items of hand-spun and hand-woven textiles (Khadi goods) for exclusive purchase from Khadi & Village Industries Commission (KVIC). Government has also reserved all items<sup>3</sup> of handloom textiles including Barrack Blankets for exclusive purchase from KVIC or notified handloom units through the Association of Corporations and Apex Societies of Handlooms (ACASH) and Women's Development Organization (WDO). The list of such items have been notified vide The handloom textile items are to be purchased from KVIC to the extent they can supply and the balance from the handloom units of ACASH; to the extent these units can make supplies. Left over quantity, if any, may be purchased from other sources. In the case of KVIC, the rates are fixed by certification committee, and the rates so fixed are reviewed by the Cost Accounts Branch of the Ministry of Finance. In the case of ACASH, the final price will be calculated by ACASH and fixed by the Ministry of Textiles by associating a representative of the Chief Accounts Office of Department of Expenditure, Ministry of Finance. The Central Purchase Organization (e.g. DGS&D) also enters into long term contracts with KVIC and ACASH for items of recurrent demands and lays

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<sup>2</sup> Ministry of Textiles O. M. No. 4/2/88-DCH/M & E dated 17th February 1992

<sup>3</sup> List of Items: [http://handlooms.nic.in/User\\_Panel/UserView.aspx?TypeID=1199](http://handlooms.nic.in/User_Panel/UserView.aspx?TypeID=1199)

down terms and conditions therein. All relevant details in this regard are available from DGS&D. For other items, the purchase from both KVIC and ACASH should be made on single tender basis. Normal inspection and other procedures shall apply for procurement through KVIC/ ACASH. Testing arrangements will be provided by KVIC/ ACASH or by their notified units and where the same are not available; testing charges for testing outside at approved laboratory should be borne by KVIC/ ACASH/ their units. *Annexure 26 lists the items currently reserved for purchase through KVIC/ ACASH.*

#### **1.10.2 Reservation of Procurement of certain class of Products from certain agencies-**

##### **Pharmaceuticals from Pharmaceutical CPSEs**

The pharmaceuticals Purchase Policy<sup>4</sup>, 2013 is intended to ensure

- i). optimum utilization of the installed capacity and to provide necessary fillip in reviving these ailing pharmaceuticals CPSEs
- ii). availability of quality medicines at low prices to the masses
- iii). Drug security of the nation.

The salient features of this policy are as follows:

- i) Pharmaceuticals Purchase Policy in respect of 103 medicines would be valid for a period of five years from the date of issue (30/10/2013) of orders by Department of Pharmaceuticals.
- ii) Pharmaceuticals Purchase Policy will extend only to Central Public Sector Enterprises (CPSEs) under the administrative control of Department of Pharmaceuticals such as Indian Drugs and Pharmaceuticals Limited (IDPL), Hindustan Antibiotics Limited (HAL), Bengal Chemicals and Pharmaceuticals Limited (BCPL), Karnataka Antibiotics and Pharmaceuticals Limited (KAPL) and Rajasthan Drugs and Pharmaceuticals Limited (RDPL) and their subsidiaries where Government of India owns 51% or above shares.
- iii) This would be applicable to purchases by Central Government departments, their Public Sector Undertakings, and Autonomous Bodies, etc. This would also be applicable to purchase of medicines by State Governments under Health Programmes funded by Government of India such as the National Rural Health Mission etc.
- iv) The pricing of the products would be done by National Pharmaceutical Pricing Authority (NPPA) using the cost based formula, as mentioned in the Drugs Price Control Order, 95. A uniform discount

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<sup>4</sup>Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, OM 50(9)/ 2010-PI-IV Dtd 10/12/2013

of 16% would be extended to all products. All the taxes, whatsoever, would have to be passed on to buyers.

v) Annual revision of prices would be linked to Wholesale Price Index as per provisions contained in Drugs Prices Control Order, 2013.

vi) The procuring entity would purchase from pharma CPSEs and their subsidiaries subject to their meeting Good Manufacturing Practices (GMP) norms as per Schedule 'M' of the Drugs & Cosmetic Rules.

vii) In case pharma CPSEs and their subsidiaries fail to supply the medicines, the procuring entity would be at liberty to make purchases from other manufacturers. If the pharma CPSEs or their subsidiaries fail to perform as per the purchase order, they would also be subject to payment of liquidated damages or any other penalty as per the terms of the contract.

viii) The list of medicines (*please refer to Annexure 27*) may be reviewed and revised by the Department of Pharmaceuticals as per requirement.

#### **1.10.3 Reservation of specific items for procurement from Micro and Small Enterprises (MSE)**

To enable wider dispersal of enterprises in the country, particularly in rural areas, the Central Government Ministries or Departments or Public Sector Undertakings shall continue to procure items reserved for procurement exclusively from MSE (presently 358 items including 8 items of Handicrafts) from Micro and Small Enterprises, which have been reserved for exclusive purchase from them. The latest list may be seen from the website of the MSME Ministry<sup>5</sup>. Ministry of MSME has clarified that the laminated paper Gr. I, II and III are not covered under the paper conversion product (SI.No.202) of the Public Procurement Policy. For locating the sources of such reserved items, NSIC may be contacted.

#### **1.10.4 Procurement Preference Policy for Micro and Small Enterprises (MSEs)**

1. From time to time, the Government of India (Procuring Entity) lays down procurement policies to help inclusive national economic growth by providing long-term support to small and medium enterprises and disadvantaged sections of society and to address environmental concerns. The Procurement Preference Policy for Micro and Small Enterprises, 2012 has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium

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<sup>5</sup> <http://www.dcmsme.gov.in/schemes/ListOf358ItemsReserved.pdf>

Enterprises Development (MSME) Act, 2006. Details of the policy are available on the MSME website<sup>6</sup>.

2. Micro and Small Enterprises (MSE) must, along with their offer, provide proof of their being registered as MSE (indicating the terminal validity date of their registration) for the item tendered, with any agency mentioned in the notification of the Ministry of Micro, Small and Medium Enterprises (Ministry of MSME), indicated below:
  - (a) District Industries Centres;
  - (b) Khadi and Village Industries Commission;
  - (c) Khadi and Village Industries Board;
  - (d) Coir Board;
  - (e) National Small Industries Corporation;
  - (f) Directorate of Handicraft and Handloom; and
  - (g) Any other body specified by the Ministry of MSME.
3. For ease of registration of Micro and Small Enterprises (MSMEs), Ministry of MSE has started Udyog Aadhar Memorandum which is an online registration system (free of cost) w.e.f. 18th September, 2015 and all Micro & Small Enterprises (MSEs) who are having Udyog Aadhar Memorandum should also be provided all the benefits available for MSEs under the Public Procurement Policy for Micro and Small Enterprises (MSEs), Order 2012.
4. The MSEs are provided tender documents free of cost and are exempted from payment of earnest money.
5. Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.
6. In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 20 per cent of total tendered value. The 20 per cent quantity is

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<sup>6</sup> <http://dcmsme.gov.in/pppm.htm>

to be distributed proportionately among these bidders, in case there are more than one MSMEs within such price band.

7. Within this 20% quantity, a purchase preference of 4 per cent (that is, 20 per cent out of 20 per cent) is reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs (if they participate in the tender process and match the L1 price). Provided that, in event of failure of such SC/ ST MSE to participate in tender process or meet tender requirements and L1 price, 4 per cent sub-target shall be met from other MSE. MSEs would be treated as owned by SC/ ST entrepreneurs:
  - (a) In case of proprietary MSE, proprietor(s) shall be SC /ST
  - (b) In case of partnership MSE, the SC/ ST partners shall be holding at least 51% shares in the unit
  - (c) In case of Private Limited Companies, at least 51% share shall be held by SC/ ST promoters.
8. For enhancing participation of MSEs owned by SCs /STs in Government procurement, Central Government Ministries /Departments /PSUs may conduct Special Vendor Development Programmes /Buyer-Seller Meets. In the opinion of Ministry of MSME, in case of tender item is non-split-able or non-dividable, etc. MSE quoting price within price band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering spirit of policy for enhancing the Govt. procurement from MSE.
9. Ministry of MSME have clarified that all Central Ministries/Departments/ Central Public Sector Undertakings may relax condition of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurements subject to meeting of quality and technical specifications.
10. Where any Aggregator has been appointed by the Ministry of MSSE, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to these also.
11. This Policy is meant for procurement of only goods produced and services rendered by MSEs and not for any trading activities by them. An MSE Unit will not get any purchase preference over another MSE Unit.
12. **Exemptions from the policy:** Given their unique nature, defence armament imports shall not be included in computing 20 per cent goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles, etc. shall remain out of purview of such Policy of

reservation. In other cases, Review Committee of Ministry of MSME may consider any request of Ministries /Departments /CPSUs for exemption from 20% age procurement targets on case to case basis.

#### **1.10.5 Procurement Preference for Domestically Manufactured Electronic Products**

Department of Electronics and Information Technology (DeitY) had notified a policy<sup>7</sup> (subsequently revised<sup>8</sup>) for Preferential Market Access (PMA) in Government procurement for Domestically Manufactured Electronic Products (DMEP, having a specified minimum domestic Value Addition (VA)) for notified items of Electronics and Networking. Subsequently eligible products have been notified<sup>9</sup> and guidelines<sup>10</sup> have been issued for implementation of the policy. The Department of Telecommunications (DoT) has also notified 23 Telecom Products<sup>11</sup>. Latest details of policy and notifications may be referred to on DeitY website<sup>12</sup>.

The procurement preference for Domestically Manufactured Electronics Products (DMEP) will be given to all notified electronic products manufactured by entities registered in India, including in Special Economic Zones (SEZs), and engaged in manufacture of such electronic products which would include Original Equipment Manufacturers (OEMs) and their contract manufacturers but not traders. Sole selling agents/authorised distributors/authorised dealers/authorised supply houses of domestic manufacturers are eligible to bid on behalf of domestic manufacturers provided they submit requisite authorization and Self-certification from the OEM. Additionally, such products shall meet the criterion of specified domestic value addition (on a self-certification basis) as laid down in the policies, issued vide various notifications, for being classified as DMEP. The template<sup>13</sup> of provisions to be included in the tender documents has been issued by the DeitY, which has to be included in the Standard Bidding Documents (SBDs).

The products notified for preference provision to domestic manufacturers are:

1. Desktop PCs
2. Dot matrix printers

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<sup>7</sup> Department of Information Technology's notification No. 8(78)/2010-IPHW dated 10th February 2012

<sup>8</sup> No. 33(3)/2013-IPHW dated 23.12.2013

<sup>9</sup> No. 33(3)/2013-IPHW dated 22.05.2014 and 01.10.2014

<sup>10</sup> No. 8(78)/2010-IPHW dated 12.06.2013, subsequently revised by No: 33(7)/2015-IPHW 16.11.2015

<sup>11</sup> [http://deity.gov.in/sites/upload\\_files/dit/files/DoT\\_PMA\\_for\\_Govt\\_pdf.pdf](http://deity.gov.in/sites/upload_files/dit/files/DoT_PMA_for_Govt_pdf.pdf)

<sup>12</sup> <http://deity.gov.in/esdm/pma>

<sup>13</sup> [http://deity.gov.in/sites/upload\\_files/dit/files/Template\\_20\\_6\\_2014.pdf](http://deity.gov.in/sites/upload_files/dit/files/Template_20_6_2014.pdf)

3. Tablet PCs
4. Laptop PCs
5. Contact smart cards
6. Contactless smart cards
7. LED products
8. Biometric access control/authentication devices
9. Biometric finger print sensors
10. Biometric iris sensors

For notified electronic products, the DMEP bidder quoting a price within the band of L1 + 20 per cent, in a situation where the L1 price is not from a DMEP, is eligible for being awarded the specified percentage (by value as notified for the product - minimum 30 per cent) of the total tendered value, if he agrees to match the L1 price. In case the first eligible DMEP bidder fails to match the L1 bid, the DMEP bidder with the next higher bid will be invited to match the L1 bid and so on. However, the Procuring Entity may choose to divide the order amongst more than one successful bidder as long as all such bidders match the L1 bid and if the criteria for allocating the tender quantity amongst a number of successful bidders are clearly articulated in the tender document. In case all eligible domestic manufacturers fail to match the L1 bid, the actual bidder holding the L1 bid will secure the order for the full procurement value. *Examples of various scenarios of procurements are given in Annexure 28.*

## 1.11 Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by public authorities on a suo motu or proactive basis and Section 4(2) and Section 4(3) prescribe the method of its dissemination to enhance transparency and also to reduce the need for filing individual RTI applications. The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued “Guidelines on suo motu disclosure under Section 4 of the RTI Act” vide their OM No.1/6/2011-IR dated April 15, 2013.<sup>14</sup> The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

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<sup>14</sup> <http://cic.gov.in/GuidelinesOnProActive.pdf>

“Information relating to procurement made by public authorities including publication of notice/tender enquiries, corrigenda thereon, and details of bid awards detailing the name of the Vendor/ Contractor of goods/services being procured or the works contracts entered or any such combination of these and the rate and total amount at which such procurement or works contract is to be done should be disclosed. All information disclosable as per Ministry of Finance, Department of Expenditure’s O.M. No 10/1/2011-PPC dated 30th November, 2011<sup>15</sup> (and 05th March 2012<sup>16</sup>) on Mandatory Publication of Tender Enquiries on the Central Public Procurement Portal and O.M. No. 10/3/2012- PPC dated 09th January 2014 on implementation of comprehensive end-to-end e-procurement should be disclosed under Section 4 of the Right to Information Act. In case of procurements made through DGS&D Rate Contracts or through nominated government agencies, only award details need to be published....”

## 1.12 Public Procurement Cycle

The procurement process for goods, works and/or services typically involves the following cycle of activities, undertaken in the order stated below.

- a) **Need Assessment:** Need assessment, formulation of Specifications and Procurement Planning
- b) **Bid Invitation:** Preparing bid documents, publication, receipt and opening of bids;
- c) **Bid Evaluation:** Evaluation of bids and award of contract; and
- d) **Contract Execution:** Contract management and closure.
- e) **Disposal of Scrap:** Disposal of Scrap through various modes of disposal.

Details and procedures of various stages of the procurement cycle would be described in subsequent Chapters of the manuals.

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<sup>15</sup> [http://finmin.nic.in/the\\_ministry/dept\\_expenditure/gfrs/pub\\_tender\\_enq\\_cppportal.pdf](http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/pub_tender_enq_cppportal.pdf)

<sup>16</sup> [http://eprocure.gov.in/cppp/sites/default/files/instruction\\_contents/INST\\_DOC\\_NO\\_7/OM\\_DoE\\_5thMarch2012.pdf](http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_7/OM_DoE_5thMarch2012.pdf)

## **Chapter 2: Need assessment, formulation of Specifications and Procurement Planning**

### **2.1 Need Assessment**

2.1.1 Procurements should be initiated only based on an indent from the user department. The authority in the user department initiating the indent for procurement shall first determine the need (including anticipated requirement) for the subject matter of the procurement. Description and Specification of Need assessment is of fundamental importance in ensuring value for money, transparency, competition and level playing field in procurement. The user department shall maintain all documents relating to the determination and technical/financial/budgetary approvals of the need for procurement. During need assessments, the following matters are decided to comply with the 'Procurement Guidelines':

- a) **The expression/description of the need** keeping in view the Value for Money (VfM) and to ensure wide competition. Therefore to the extent practicable it should be:
  - (i) Unambiguous, complete, using common terminology prevalent in relevant trade;
  - (ii) In accordance with the guidelines prescribed if any in this regard;
  - (iii) Except in case of proprietary purchase from a selected single source, reference to brand names, catalogue numbers or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item descriptions should always be followed by the words "or substantially equivalent".
- b) **Method of satisfying it** (owning/leasing/hiring/outsourcing or through Public Private Partnership (PPP), and so on) may be determined as per policies declared in this regard or based on a techno-economic evaluation (using life cycle cost, if feasible) of various alternative methods of satisfaction of the need and compatibility and inter-operability with existing infrastructure or systems.
- c) **The quantity of the subject matter of procurement, commensurate with economy:**
  - (i) Care should be taken not to make unnecessary procurements much in advance of actual requirements, if such procurement is likely to be unprofitable to the government, coupled with unwarranted inventory-carrying cost. Where sales, consumption or usage limits of requirements have been laid down by the Competent Authority (CA), the officer signing the indent should also certify that the prescribed scales or limits are not

exceeded. The authority preparing the indent shall neither package nor divide its procurement or take any other action so as to limit competition among potential bidders or to avoid its obligations under 'Procurement Guidelines'. Provided that in the interest of efficiency, economy, timely completion or supply, wider competition or access to MSEs, a indenting or procuring authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other users for procurement. It is also necessary to round off the calculated quantity to the nearest wagon load/truck load/package to economise on transportation; and

- (ii) Units of quantity are a very important parameter. Some items may be manufactured in metric tons but may be used in units of numbers or units of lengths (for example, steel sheets/structural). For the sake of transparency, it is important to buy an item in units of manufacture. For example, it is better to buy steel/structural in units of weight since it has a tolerance in weight per unit of length; this usually works to the disadvantage of the buyer if it is bought in units of length. The buying and issuing units of an item may be different – but should be standardised.
- d) **Time-schedule and place** of product/work/service delivery: Need assessment and generation of indent for procurement should be done sufficiently in advance of the time when goods are required. Delays in need assessment have adverse impact on the value for money and transparency. Great care is required to be exercised in filling up realistic dates for the requirement of material. The procuring entity should be allowed time in accordance with the establishment lead times. In urgent cases, the procuring entity may entertain indents providing shorter periods but such urgencies should be approved by the authority empowered to grant administrative approval for the indent and must be accompanied by proper justification.
- e) **Formulation of Specification** to ensure value for money, transparency, level playing field and ensuring widest competition. This is further detailed in subsequent para.
- f) **Estimation of Cost:**
  - a) The estimated cost in the indent is a vital element in various procurement processes, approvals and establishing reasonableness of prices at the time of evaluation of the tender. Therefore, it should be worked out in a realistic and objective manner. The prevailing market price ascertained through a market survey or budgetary quotations from one or more prospective suppliers or published catalogues/Maximum Retail Price (MRP) printed on the item is the main source for establishing the estimated cost of non-stock items. It may be noted that MRPs usually include a significant dealers' margin;

b) For equipment/craft which are uniquely custom-built to specifications, the best way to get a fair assessment of costs is by obtaining budgetary quotes from potential parties. Ideally, there should be three quotes. However, there is need to have a time schedule for receipt of quotes to ensure some timeframe for this activity. Thus:

- An attempt should be made to obtain as many budgetary quotes as possible from reputed/potential firms and a time of 21 days be indicated therefore. In the event of receipt of less than three budgetary quotes, two extensions of up to 10 days each may be considered; and
- In the event of non-availability of three quotes within the above extended period, the estimates should be prepared on the basis of the number of budgetary quote(s) received, which may even be one; and where more than one budgetary quote is received, the estimate should be framed on an average of the quotes which will reduce variations and fluctuations;

c) In addition, wherever they are available Directorate General of Supplies and Disposals (DGS&D) rates should be considered. Likewise rates should be compared with recent orders/purchases of similar equipment by other states/departments. Other methods for establishing the estimated cost in the indent and tender evaluation are:

- a. Estimated rate in past indents of the same goods;
- b. Last purchase price of this or similar or nearly equivalent requirements;
- c. Costing analysis based on costs of various components/raw materials of the item;
- d. Rough assessment from the price of the assembly/machine of which the item is a part or vice versa;
- e. Through the internal or external expert costing agencies; and
- f. As a last resort, rough assessment from the opportunity cost of not using this item at all; and

These methods are not mutually exclusive and can be supplemented with escalations to cater for inflation, price increases of raw materials, labour, energy, statutory changes, price indices, and so on, to make them usable in conditions prevailing currently. In case of foreign currencies, the rate should be reduced to a common denomination of Indian Rupees. Price

indices can be obtained from the following websites. Some may require prior free registration and some paid subscription:

- 1) For price indices of indigenous items: <http://www.eaindustry.nic.in/home.asp.in> (Ministry of Industry);
- 2) For metals and other minerals: <http://www.mmrnoline.com/> or <http://www.metalprices.com/index.asp> or <http://www.asianmetal.com/>;
- 3) For price trends of nonferrous details ;London Metal Exchange - <https://www.lme.com/>) gives price trends of nonferrous details, which often show volatile trends;
- 4) Other useful sites: <http://www.tradeintelligence.com/> and [http://www.cmie.com/. \(Centre for Monitoring Indian Economy\);](http://www.cmie.com/.)
- 5) For price trends of different countries: <http://www.imf.org/external/pubs/ft/weo/2015/01/> (International Monetary Fund) and
- 6) For organisation/chambers of commerce such as the (Indian Electrical and Electronics Manufacturer's Association): [www.ieema.org](http://www.ieema.org);

## **2.2 Formulation of Technical specifications (TS)**

2.2.1 The procuring authority should ensure that specifications are developed to ensure VfM, level playing field and wide competition in procurement. The TS constitute the benchmarks against which the procuring entity will verify the technical responsiveness of bids and, subsequently, evaluate the bids. Therefore, well-defined TS will facilitate the preparation of responsive bids by bidders as well as examination, evaluation and comparison of the bids by the procuring entity. It would also help in ensuring the quality of the supplied goods. The procuring authority should ensure that the specification should:

- a) Provides a level playing field and ensures the widest competition; and
- b) Be unambiguous, precise, objective, functional, broad based/generic, standardised (for items procured repeatedly) and measurable such that it facilitates the widest competition and provides a level playing field to all prospective bidders. TS should be broad enough to avoid restrictions on workmanship, materials and equipment commonly used in manufacturing similar kinds of goods;
- c) Set out the required technical, qualitative and performance characteristics to meet just the bare essential needs of the procuring entity without including superfluous and non-essential features, which may result in unwarranted expenditure;
- d) Standardised for items procured repeatedly;

- e) Normally be based on standards set by the Bureau of Indian Standards (BIS), wherever such standards exist. Preference should be given to procure the goods which carry the BIS mark. In the absence of BIS standards, TS may be based on the relevant ISO standards. Provided that an indenting authority may, for reasons to be recorded in writing, base the TS on equivalent international standards even in cases where BIS standards exist. For any deviations from Indian standards or for any additional parameters for better performance, specific reasons for deviations/modifications should be duly recorded with the approval of the CA. Where the technical parameters are only marginally different, Indian standards may be specified and the departmental specifications could cover only such additional details as packing, marking, inspection, and so on, as are specially required to be complied for a particular end use;
- f) All dimensions incorporated in the specifications shall be indicated in metric units. If due to some unavoidable reasons, dimensions in FPS units are to be mentioned, the corresponding equivalents in the metric system must also be indicated.
- g) Comply with sustainability criteria and legal requirements of environment or pollution control and other mandatory and statutory regulations, or internal guidelines, if any, applicable to the goods to be purchased;
- h) Make use of best practices. Examples of specifications from successful similar procurements in the other organisations or sector may provide a sound basis for drafting the TS;
- i) Commensurate with VfM, avoid procurement of obsolete goods and require that all goods and materials be new, unused and of the most recent or current models and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the bidding documents;
- j) Should have emphasis on factors such as efficiency, optimum fuel/power consumption, use of environmental-friendly materials, reduced noise and emission levels, low maintenance cost, and so on. Government of India has set up the Bureau of Energy Efficiency (BEE) (<http://www.bee-india.nic.in>) on March 1, 2002 under the provisions of the Energy Conservation Act, 2001, with the primary objective of reducing the energy intensity of the Indian economy. Under the Standards and Labelling Programme started in May 2006 by BEE, manufacturers are required to place a label (containing a number of Star marks) showing the benchmarked energy efficiency level. More the stars higher the efficient is the appliance. The programme is currently running for refrigerators, air

conditioners, televisions, geysers, tube lights and fans among household appliances. We should try to build either the BEE Star rating where applicable and minimum energy efficiency where such star ratings are not yet available, into the TS. *Such benchmarking illustrates use of neutral and dependable benchmarking in procurement of sustainable environmentally favourable goods by way of appropriately formulated Technical Specifications.* The same approach can be used in sustainability criteria other than energy conservation, provided similar neutral and dependable benchmarking schemes are set-up;

k) **Discourage procurement involving evaluation of samples:** According to the existing guidelines on public procurement of goods, purchase in accordance with a sample should not be usually undertaken. Calling<sup>17</sup> for a sample along with the tender and deciding on the basis of evaluation of the sample may NOT be done. In certain specifications, there may be a built-in sample clause. Usually such clauses are stipulated to illustrate indeterminable characteristics such as shade/tone, make-up, feel, finish and workmanship, and so on. In some specifications, there may not be a sample clause but such indeterminable characteristics are left to be agreed to between the seller and buyer. One way to procure/indigenise certain spares whose drawings/specifications are not available is to procure in accordance with an available sample of the part. In such cases, supply must be in conformity with an agreed reference sample in such respects only, whereas for the remaining characteristics it must be in conformity with the laid down drawings/specifications. Procurement of such items should be decided on the basis of detailed specifications/drawings and no sample should be called for or evaluated along with the bids. If desired, a purchaser's reference sample may be displayed for prospective tenderers to illustrate the desired indeterminable characteristics, which final supplies from successful bidder(s) will have to meet in addition to the specifications/drawings. If required, in addition to the purchaser's reference sample, the provision for the submission of a pre-production sample matching the purchaser's sample by successful bidder(s) may be stipulated for indeterminable characteristics, before giving clearance for bulk production of the supply. The Indent for items which are to be procured in accordance with a sample must be accompanied with three sealed samples as far as possible;

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<sup>17</sup> CVC's circular: 2EE-1-CTE-3 dated 15 October 2003, URL: <http://cvc.gov.in/eecte32k3.pdf>

### ***2.2.2 Essential Technical particulars***

The essential Technical particulars to be specified in the tender document shall include the following to the extent applicable for a particular purchase:

- 1) Scope of supply and, also, end use of the required goods;
- 2) All essential technical, qualitative, functional and performance characteristics and requirements (such as material composition, physical, dimensions and tolerances, workmanship and manufacturing process wherever applicable; test schedule; if any), including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the user may include an additional format for guaranteed technical parameters (as an attachment to the bid submission sheet), where the bidder shall provide detailed information on such technical performance characteristics in reference to the corresponding acceptable or guaranteed values;
- 3) Drawings;
- 4) Requirement of the BIS mark, where applicable, mentioning all parameters where such a specification provides options;
- 5) Requirement of an advance sample, if any, at the post contract stage before bulk production;
- 6) Special requirements of preservation, packing and marking, if any;
- 7) Inspection procedure for goods ordered and criteria of conformity;
- 8) Requirements of special tests or type test certificate or type approval for compliance of statutory requirements with reference to pollution, emission, noise, if any;
- 9) Other additional work and/or related services required to achieve full delivery/completion, installation, commissioning, training, technical support, after-sales service and Annual Maintenance Contract (AMC) requirements, if any;
- 10) Warranty requirements;
- 11) Qualification criteria of the bidders, if any; and
- 12) Any other aspects peculiar to the goods in question such as shelf life of the equipment, and so on.

### ***2.2.3 Need Assessment and Technical Specification - Risks and Mitigations***

<b><i>Risk</i></b>	<b><i>Mitigation</i></b>
<b>Need is either artificially created or exaggerated</b> , with the intention to channel benefits to an individual or an organisation. For example, demand is created for a good that is not needed simply to benefit the	<b>Keep records and involve stakeholders:</b> Records of decision making and data used should be kept. Involve procurement and finance functions at this stage also. End user and stakeholder consultations

company's owner.	should be part of the process.
<b>Delays in Assessment of Need and generation of Indent for Procurement</b> , may lead to shortcut procurement procedures that dilutes transparency and prevent achievement of value for money. It may also lead to delays in delivery of goods.	Need assessment should be done sufficiently in advance of the time when goods are required. In case of urgent requirements, the urgency certificate should be approved by authority empowered to grant administrative approval for the indent, recording justification – why the need could not be formulated earlier.
<b>The estimate of the costs may be inadequate.</b> This may lead to inadequate response from the bidders and may delay finalisation of procurement. It may also adversely effect the quality of supplies.	Estimates of procurement should be prepared with due diligence, keeping in view inflation, technology changes, profit margins etc.
<b>Need Description/ Specifications involving subjectivity:</b> Procurements where samples are asked to be submitted along with the offer and the evaluation is based on the subjective evaluation of samples – may lead to allegations of corruption.	If required, a stock sample for indeterminable parameters such as, shade/tone, size, make-up, feel, finish and workmanship, may be displayed during procurement to which the offers must conform. If necessary, provide for submission of an advance sample by successful bidder(s) before giving clearance for bulk production of the supply.
<b>Need Description/ Specifications and terms of reference</b> are disproportionate to the need identified or made to tilt in favour one or a group of vendor (s) or contractor(s) to artificially restrict competition.	<b>Use a formal market discovery tool:</b> Prebid-conference and/ or well publicised EoI may be used for discovery of the market. Otherwise, encourage and invite comments on the technical and commercial conditions in the bid document or hold pre-bid conference.
<b>Asymmetric dissemination of vital need information:</b> Dialogue for determining solutions available in the market is held only with selected prospective bidders, giving them undue advantage in preparing for the bidding. Selected prospective bidders get access to inside information not disclosed or disclosed late to others.	

## 2.3 Obtaining Technical, Administrative and Budgetary Sanctions/ Approvals and signing of Indents

The indenting authority should ensure that there is provision of funds for payment for the goods. Procuring Entities may lay down a schedule of powers for administrative and budgetary approval of indents generated for procurement of goods (Please refer to Annexure 2C for suggested Structure of SoPP). Before granting such approvals, it should be certified that funds in the budget are available and liability for this indent is noted against the total available budget. In case the time schedule of delivery is urgent (or shorter than usual lead-time) an urgency certificate should be recorded justifying the urgency. The indenting authority may submit an indent in form of a Purchase Requisition (Annexure 3) to the procuring entity, giving it adequate time for procurement. Indenters should monitor the progress of the Indents submitted to them. For this purpose, a register may be maintained in the format provided in Annexure 4A. Annexure 4A: Purchase Requisition Register for On receipt in the procuring authority, progress of such

Indents should be monitored for which a register may be maintained in the format provided in *Annexure 4B*.

## 2.4 Procurement Planning

2.4.1 After receipt of the Indent, the procuring entity should take following decisions to initiate procurement, to ensure conformity to the Procurement Guidelines:

- a) Within 10 working days of receipt of the indent from the user department, the procuring authorities should critically review of the description and TS enclosed with the indent for completeness/approvals/funding, VfM and possibility of the widest competition and seek clarifications from the indenting officer, if needed, before initiating such procurement;
- b) Reassessment of the quantity and appropriate aggregation of quantities of various users. The procuring authority shall normally neither package nor divide its procurement or take any other action so as to limit competition among bidders or to avoid its obligations under 'Procurement Guidelines'. Provided that in the interest of efficiency, economy, timely completion or supply, wider competition or access to MSEs, a procuring authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other users for procurement. Such an eventuality may arise when there is a sudden abnormal requirement which is the multiple of average annual past procurements. Packaging of the contract and procurement planning should be done keeping in view the availability and possibility of eliciting the interest of the qualified firms; effective competition for the type and size of the contract; and access to MSEs. For example for a particular contract, material to be procured may constitute more than 50 per cent of the total cost of works or there are services which are a mix of consultancy services with substantial element of goods, such as procurement of an IT system. Such procurement could be done as a single composite contract comprising all components or divided into separate contracts for each category of procurement. In all such situations, the dominant aspect of the requirement and value for money aspects of a composite all-inclusive contract versus dividing the contract into respective categories should be carefully examined at the time of Need assessment/ Procurement Planning. This is a crucial stage of decision-making in procurement planning for a better outcome and for VfM considerations;
- c) Determine and declare in documents, any limitation on participation of bidders as per the government's procurement policy regarding preference to certain sections of industry, if any. The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or

against any category thereof except to lay down a reasonable and justifiable eligibility or pre-qualification criteria for the bidders;

- d) Selection of a system of bidding (single/two stage; single/two bids; suitability for e-procurement or reverse auction);
- e) Select the mode of procurement (open tenders, limited tenders, single tenders, rate contracts, and so on);
- f) Decisions on the timeframe for completing various stages of procurement, which should be declared in the pre-qualification/bidder registration or bidding documents. The procuring entity should endeavour to adhere to the time limit so decided and record reasons for any modification of such limits; and
- g) Integrated procurement plan should be prepared for goods, works and services for the ensuing financial year based on the latest cost estimates, and realistic time schedule for procurement activities and contract implementation and thus schedule and stagger the procurements over the year with a view to ensure an even load on the procuring entity and the market. (please see template at Annex ----);

2.4.2 The procuring entity may publish information regarding the planned procurement activities for the forthcoming year or years on the central public procurement portal and website/ eProcurement portal used by the procuring entity with a caveat that such publication shall not be construed as initiation of a procurement process and cast any obligation on the procuring entity to issue the bidding document or confer any right on prospective bidders.

<b>2.4.3 Procurement Planning - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
<b>Procurement Planning</b>	
<b>Packaging, bundling and slicing</b> of requirement is done to avoid open competition or reduce competition. Or it is too large to make it difficult for MSEs to participate. Possible clubbing/collaboration among different units having the same needs are not explored.	<b>Lay down</b> a clear policy for packaging and bundling of requirements. In large packages, the affordability of EMD and resultant restriction on competition may be kept in view and bidders may be allowed to bid for slices of the package by depositing proportional EMD.

## **Chapter 3: Supplier Relationship Management**

### **3.1 Supplier Relationship Management**

Supplier Relationship Management comprises the following functions:

- a. Ensuring compliance of suppliers to the Code of Integrity for Public Procurement and Integrity Pact (CIPP) if stipulated in Bid Documents;
- b. Holiday listing; removal from the list of registered suppliers and banning/debarment of firms; and
- c. Development of new sources and registration of suppliers.

### **3.2 Code of Integrity for Public Procurement (CIPP)**

3.2.1 Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Procuring Entities involved in procurement and the bidders/ suppliers must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Need Assessment). The bidders/ suppliers should be asked to sign a declaration about abiding by a Code of Integrity for Public Procurement In registration applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of registered suppliers, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on.

3.2.2 **Code of Integrity for Public Procurement:** Procuring authorities as well as bidders, suppliers, contractors and consultants should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:

- a) **“Corrupt practice”:** making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
- b) **“Fraudulent practice”:** any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This

includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;

- c) **“Anti-competitive practice”**: any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the procuring entity, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
- d) **“Coercive practice”**: harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- e) **“Conflict of interest”**: participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the procuring entity with an intent to gain unfair advantage in the procurement process or for personal gain; and
- f) **“Obstructive practice”**: materially impede the procuring entity’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the procuring entity’s rights of audit or access to information;

### **3.2.3 *Obligations for Proactive Disclosures***

- a) Procuring authorities as well as bidders, suppliers, contractors and consultants, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declare any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and
- b) Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three

years or of being debarred by any other procuring entity. Failure to do so would amount to violation of this code of integrity.

c) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the procuring entity. Similarly voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidders actions in the tender and subsequent contract.

**3.2.4 Punitive Provisions:** Without prejudice to and in addition to the rights of the procuring entity to other penal provisions as per the bid documents or contract, if the procuring entity comes to a conclusion that a (prospective) bidder/supplier, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the procuring entity may take appropriate measures including one or more of the following:

- a. if his bids are under consideration in any procurement
  - i). Forfeiture or encashment of bid security
  - ii). calling off of any pre-contract negotiations, and;
  - iii). rejection and exclusion of the bidder from the procurement process
- b. if a contract has already been awarded
  - i). Cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity,;
  - ii). Forfeiture or encashment of any other security or bond relating to the procurement;
  - iii). Recovery of payments made by the procuring entity along with interest thereon at the prevailing rate;
- c. Provisions in addition to above:
  - i). Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the procuring entity for a period not less than one year;
  - ii). In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
  - iii). Initiation of suitable disciplinary or criminal proceedings against any individual staff found responsible.

### 3.3 Integrity Pact (IP)

The Pre-bid and Post-Contract Integrity Pact is a tool to help governments, businesses and civil society to fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes insecurity of Bidders, that while they themselves may abjure Bribery, but their competitors may resort to it and win contract by unfair means.

Ministry of Finance, Department of Expenditure have mandated<sup>18</sup> Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) to incorporate Integrity Pact by, depending on the nature of procurements/ contracts above a threshold value. The nature of procurement and threshold of value is to be decided by the Ministries/ Departments with approval of the Minister in charge. As guidance, the threshold should be such as to cover bulk (80-90%) of its procurement expenditure.

“The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- i). Promise on the part of the Procuring Entity to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- ii). Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- iii). Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- iv). Undertaking by the Bidders that they have not and will not sell the same material/ equipment at prices lower than the bid price.

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<sup>18</sup> OM No.14(12)/ 2008- E-II(A) dated 19<sup>th</sup> July 2011

- v). Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- vi). Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary.
- vii). Bidders to disclose any past transgressions with any other company that may impinge on the anti corruption principle.
- viii). Integrity Pact lays down the punitive actions for any violation.
- ix). IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organization in consultation with Central Vigilance Commission. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. Government of India organizations and Public Sector Undertakings desirous of implementing Integrity Pact are required to select at most three persons (below the age of 65 years) of high integrity and reputation as Independent External Monitors (IEM) after due diligence and forward to the CVC for its approval. Only those officers of Government of India departments or Public Sector Undertakings, who have retired from top management positions, would be considered for appointment as IEM, provided they are neither serving or retired from the same organization. Eminent persons, retired judges of High/ Supreme Courts, executives of private sector of considerable eminence could also be considered for functioning as Independent External Monitors. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years (maximum tenure of 5 years).
- x). In tenders meeting the criteria of threshold value/ nature of procurement - Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by Purchaser's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway. Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT).

xi). **Role / Functions of IEMs:** The Monitors would not be subject to instructions by the representatives of the parties and should perform their functions neutrally and independently. They would review independently and objectively, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents / books of accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. Ideally all IEMs of an organization should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations / views to the designated officer of the Procuring Entity, at the earliest. The Monitors would also inform the Procuring Entity, if they notice or have reason to believe, a violation of the Integrity Pact. They may also send their report directly to the Central Vigilance Commission, in case of suspicion of serious irregularities requiring legal / administrative action. At least one IEM would be invariably cited in the NIT. However for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the Procuring Entity. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) of Procuring Entity shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO, if a complaint is received by him or directed to him by the CVC.

### **3.4 Development of New Sources and Registration of Suppliers**

3.4.1 Ensuring an up-to-date and current list of registered, capable and competent suppliers facilitates efficiency, economy and promotion of competition in public procurement, especially where open tendering is not resorted to. The list may be referred to while floating a limited tender/local purchase/direct contracting. For such tenders, it may be possible to skip bidder qualification so as to avoid unnecessary repetition/ duplication of

records thereby saving time, especially in the case of emergency procurement. The Central Purchase Organization (e.g. DGS&D) will prepare and maintain item-wise lists of eligible and qualified (i.e., capable) suppliers known as “Registered Suppliers” for various types of common user goods. Relevant details in this regard are available in DGS&D’s website (<http://dgsnd.gov.in>).

**3.4.2** Ministries / Departments with a significant volume of procurements may also register suppliers of goods, which are specifically required by them. The Ministry/ Department shall notify the authorities competent to deal with the applications and grant registrations, along with their jurisdictions. The appellate authority shall be at least one level above the registering authority or as designated by the Ministry/ Department.

**3.4.3** All Ministries/ Department may use such lists prepared by DGS&D or by other Ministries / Departments as and when necessary. Such list may be referred to while floating a limited tender/local purchase/direct contracting. For such tenders, it may be possible to skip bidder qualification so as to avoid unnecessary repetition/duplication of records thereby saving time, especially in the case of emergency procurement. Such Registered suppliers are ordinarily exempted from furnishing earnest money deposit/bid security with their tenders in tenders for items, and Monetary Limits for which they are registered.

#### **3.4.4 Categories for Registration**

In case of procurement of goods, the Administrative Department shall register firms as suppliers of goods in different trade groups of goods in the following broad categories:

- (a) Manufacturers, who supply indigenous items;
- (b) Agents/distributors of such manufacturers, who desire to market their production only through their agents;
- (c) Foreign manufacturers with/without their accredited agent in India;
- (d) Stockists of imported spares or other specified items; and
- (e) Suppliers of imported goods as are having regular arrangement with foreign manufacturers.

**3.4.5** One of the main prerequisites for registration as a manufacturer is that the firm should possess its own in-house testing facilities. In case of Small Scale Industry (SSI) units, the firm need not have its own testing facilities but regular arrangements with other reputed government or government-approved or private agencies in its area for testing of products. Before the manufacturer is included in the list of registered suppliers, Procuring Entity shall

depute a team of officers from the procuring/technical entity or any other user department (at its discretion), to the manufacturing factory/works of the applicant unit, to verify the bona fides and standing of the firm. Procuring Entity may also seek assistance from the inspection wing of DGS&D or other inspecting agencies. In case of firms having an established quality maintenance system with ISO 9001-2000 certification (latest version) by authorised agencies, Procuring Entity may consider registration of such firms without carrying out capacity assessment.

#### **3.4.6      Grades (Monetary Limits) for Registration**

Registration should be done by grading the firms (Grade A, B, and so on) on their capability for executing contract orders of different monetary limits in the relevant category of requirements. The monetary limits should be carefully fixed keeping in view the banker's reports, capacity and capability of the firm and other financial information indicated in the balance sheets, profit and loss statements:

- a.    Grade-A: Rs. 25 lakh and above;
- b.    Grade B: Rs. 5 lakh to Rs. 25 lakh; and
- c.    Grade C: Rs.1 lakh and up to Rs. 5 lakh

**3.4.7**      The firms that are registered for supply of orders valued above Rs. 5 lakh should invariably be manufacturers or their authorised agents. Procuring Entity shall register the manufacturers and not agents or middlemen. A sole selling agent/authorised agent could be considered for registration, subject to the condition that Procuring Entity is satisfied that he is the sole selling agent of manufacturers, and financial and technical capabilities of the manufacturers are ascertained by Procuring Entity. The availability of a suitable arrangement with the sole selling agent for after-sales service shall also be ensured and Procuring Entity shall also satisfy itself that a valid legal agreement exists between the applicant unit and its sole selling agent, during the period for which he is registered.

**3.3.8      *Procedure for Registration:*** The procedure to be adopted in this regard by the Central Purchase Organization or by any Ministry / Department in case it desires to register suppliers of goods which are exclusively needed by it. Registration of suppliers should be done ensuring fundamental principles of public procurement in view (especially the transparency principle - transparency, fairness, equality, competition and appeal rights) with the approval of CA after carefully assessing and verifying credentials, capability, quality control systems, past performance, after-sales service facilities, financial background, and so on, of the supplier/contractor/ service provider(s):

- a) Details of the procedure for registration of new firms may be uploaded on the website and also published in the form of a booklet for information of the suppliers. Timeframes and criteria for registration of new suppliers may be clearly indicated;
- b) Possible sources for any category/group of requirements can be identified based on internal and external references. Data of new suppliers can be obtained from the response received from suppliers, open tender advertisements, pre-qualification bids, Expression of Interest (EoI), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller meets, various publications of NSIC, DGS&D, Development Commissioner of the Small Industries Service Institute, BIS, trade journals, and so on. The e-procurement portal does pre-registration of suppliers online. Such data can be a source of information on prospective suppliers;
- c) New supplier(s) may be considered for registration at any time, provided they fulfil all the required conditions. For any larger scale or critical registration of suppliers, Procuring Entity should call for EoI by publicising its need for development of sources. The stages to be followed together with the applicable guidelines for EoI have been detailed in Chapter 5;
- d) While registering the firms, an undertaking may be obtained from them that they will abide by the CIPP enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list of registered suppliers, besides any other penalty or more severe action as deemed fit; and
- e) Along with the new/renewal application for registration, the suppliers should also be asked to declare that, if awarded a contract in any LTE in which they participate, they bind themselves to abide by the Procuring Entity's General Conditions of Contract (GCC). Such GCC should be part of the application.
- f) **Eligibility**
  - a) Any firm, situated in India or abroad, which is in the business of providing goods/works/services of specified categories of interest, shall be eligible for registration;
  - b) Where registration is granted based on partly outsourced arrangements/agreements, it shall be the responsibility of the registered unit, to keep such arrangements/agreements renewed/alive at all times, to keep their registration valid for the period for which it has been granted. Any failure in this regard may make the registration null and void ineffective

retrospectively from any such dates which the registering authority considers appropriate;

- c) Suppliers should possess valid Digital Signature Certificate (DSCs) Class III b with the company name at the time of registration/renewal, so as to enable them to participate in e-procurements
- d) Firm, against whom punitive action has been taken, shall not be eligible for re-registration during the currency of punitive action. Registration requests may not be entertained from such firms, stakeholders of whom have any interest in deregistered/banned firms;
- g) The application form, complete in all respects and accompanied with the requisite processing fee and prescribed documents shall be submitted by the firms to the registering authority. The registration application form, duly filled-in, when received from the firms shall be scrutinised carefully for assessing the capacity and capability of the firms including credentials, manufacturing capability, quality control system, past performance, after-sales service facilities, financial background, and so on, of the applicant. References shall be made to other firms of standing of whom the applicant firm claims to be a supplier/contractor. Likewise, the applicant firm's bankers may also be requested to advice about the financial standing of the firm. Registration of suppliers should be done with the approval of CA.
- h) In cases where the firm is not considered capable and registration cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority. Where a request for re-verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly;
- i) Registration should be for specific trade groups of goods/works/services. For this purpose, all goods/ works/services should be divided into trade groups and the information published on the relevant portals/ websites;
- j) It should be mentioned in the letter of registration that the registration is valid for a period of three years and would be considered for extension based (on application by the supplier/contractor/service provider) on satisfactory performance of the firm. However, the registration would be initially treated as provisional and it would be treated as confirmed only after the firm has satisfactorily executed one order of the

relevant category and value from Procuring Entity. The extension of validity of registration is not a matter of right and Procuring Entity reserves the right not to extend such registration without assigning any reason. New supplier(s) may also be considered for registration at any time, provided they fulfil all the required conditions;

- k) All registered suppliers should be allocated a unique registration number. Once the firms are registered, a circular shall be issued by the registration authority indicating the names and addresses of the registered suppliers with details of the requirements and monetary value they will supply as well as the validity period, and so on, for which they are registered;
- l) Within the monetary limits so prescribed, as also for the category of registration, the registered firm may be exempted from depositing the Earnest Money Deposit (EMD). In
- other categories and higher monetary limits, the supplier would be treated as any unregistered supplier and not be entitled to the privileges of a registered supplier. The monetary limit or category, so laid down, does not, however, debar a firm from getting orders in excess of the monetary limit or for other categories, provided the Procuring Entity is satisfied about the capacity and capability of the firm but a requisite security deposit should be obtained, as is being done in the case of unregistered firms;
- m) Performance and conduct of every registered supplier is to be watched by the concerned department. Procuring Entity should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of registration (after giving due opportunity to the supplier to make a representation) if they fail to abide by the terms and conditions of the registration or fail to execute contracts on time or supply substandard goods or make any false declaration to any government agency or for any ground which, in the opinion of the government, is not in public interest;
- n) Procuring Entity shall retain its option to reassess firms already registered, at any later date, to satisfy itself about the current financial soundness/credit worthiness, facilities available, and so on. Thereafter, Procuring Entity may decide to retain them as registered suppliers for the requirements and monetary limit earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Procuring Entity officers who reassess the firm, Procuring Entity shall delete such firm from the registered suppliers list;

**3.4.9 Registration of SSI units registered with NSIC:** Automatic registration should be extended to all SSI units registered under the single point registration scheme of NSIC and they are to be treated on par with those registered with Procuring Entity:

- 1) With effect from May 12, 2003, NSIC has decided that the enlistment certificate issued by NSIC will not be permanent and will be renewed every two years. The concept of “without monetary limit” has been abolished. Therefore, any government purchase enlistment certificate issued by NSIC, which is older than two years from its presentation or which does not have a monetary limit, should not be viewed as valid and the unit may be referred back to NSIC for corrective measures;
- 2) No fee or cost of application form, questionnaire, and so on, is to be charged from the firms which are already registered with NSIC and seek registration on Procuring Entity. They should be asked to sign the Procurement code of ethics in due course of time;
- 3) In case of poor performance, the units should be removed from Procuring Entity’s list of registered suppliers following due procedure. NSIC should also be requested to remove the name of the firm from its registration, after giving sufficient details to NSIC;
- 4) Administrative action, such as suspension, banning, and so on, against the firms will be applicable to the NSIC units also. However, in such cases, necessary comments from NSIC would, if considered necessary, be called for before action is taken. Procuring Entity shall be the final and CA in such cases; and
- 5) Any SSI unit applying for registration/renewal should be asked register itself first with NSIC. All non-NSIC registered SSI units already registered with Procuring Entity should be screened by NSIC afresh. If NSIC rejects any upon screening, it should be removed from Procuring Entity's registered list.

### 3.5 Grades of Debarment of Suppliers

3.5.1 Registration of suppliers and their eligibility to participate in Procurement Entity’s procurements is subject to compliance with Code of Integrity for Public Procurement and good performance in contracts. Following grades of debarment from registration and participation in procuring entity’s can be considered against delinquent bidders/ suppliers:

- a. **Removal from approved list:** Debarment of a delinquent supplier (including their related entities) for a period of time (1 to 3 years) from the procuring entity’s procurements with the removal of name from the approved list, due to severe deficiencies in performance or other serious transgressions; and

- b. **Banning from Ministry/ Country-wide procurements:** For serious transgression of CIPP, a delinquent supplier (including their related entities) may be banned/ debarred from a ministry/ country-wide government procurements permanently or for a specific period (2 year to 5 years).
- c. **Holiday listing (Temporary debarment or suspension):** In less serious cases, a supplier (including their related entities) may be temporary debarred from the procuring entity's procurements for short periods up to 12 months, without the firm's name being removed from the registered list;

### **3.5.2 Removal from List of Registered Suppliers**

In cases of deficiencies in any of performance issues listed below, such suppliers may be removed from the list of registered suppliers after following due process as per para 3.5.6 below. Whenever a firm is removed from the list of registered suppliers, its registration stands cancelled but the supplier data should not be deleted from the (computer) system. Suppliers removed from the registered list or their related entities may be allowed to apply afresh for registration after the expiry of the period of removal. Performance issues which may justify removal of the supplier from the list of registered suppliers are:

- i) The supplier fails to abide by the terms and conditions or to maintain the required technical/ operational staff/equipment or there is change in its production/service line affecting its performance adversely, or fails to cooperate or qualify in the review for registration;
- ii) Suppliers do not respond to requests for quotation/tenders consecutively three times without furnishing valid reasons;
- iii) Makes fraudulent attempts to pass off or mis-declare inferior or uninspected goods or short quantities in a public procurement contract;
- iv) renders services (including after sales services and maintenance services) of inferior quality than the contracted ones.
- v) fails to execute a contract or fails to execute it satisfactorily.
- vi) Other than in situations of force majeure, after opening of financial bids, the supplier withdraws from the procurement process or after being declared as successful bidder: (i) withdraws from the process; (ii) fails to enter into a procurement contract; or (iii) fails to provide performance security or any other document or security required in terms of the bidding documents.
- vii) In a rate contract violates the fall clause;
- viii) Bankruptcy or insolvency on the part of the supplier as declared by a court of law; or

- ix) If the firm ceases to exist or is acquired by or merged with another firm, or ceases to operate in the category of requirements for which it is registered.
- x) Banning by Ministry/ Department or any other government agency;
- xi) If the Central Bureau of Investigation/ CVC/ C&AG or Vigilance Department of Procuring Entity or any other investigating agency recommends such a course in respect of a case under investigation;
- xii) any other ground, based on which the registering authority considers, that continuation of registration is not in public interest.

### **3.5.3 *Banning of Firms***

When the misconduct and moral turpitude of a firm goes beyond mere performance issues and justifies imposition of a ban or debarment on business relations with the firm permanently or for a specified period of time (2 to 5 years). In the following cases, firms or individuals and any of their successors should be banned or debarred including being declared ineligible, either indefinitely or for a stated period of time, to participate in any public procurement process of GoI, if the firm or its partners/directors/ agents/representatives/employees with the knowledge of the firm or without it:

- a) If there is strong justification for believing that the proprietor or employee or representative of the firm has been guilty of violation of the Code of Integrity for Public Procurement or Integrity Pact, evasion or habitual default in payment of any tax levied by law; etc.
- b) Violate the safety or statutory norms that result in industrial accidents leading to loss or injury to life or property or to any other legal liability to The Procuring Entity;
- c) If the proprietor of the firm, its employee, partner or representative is convicted of any offence by a court under the Prevention of Corruption Act, 1988 or under the Indian Penal Code or any other law for the time being in force for offences involving moral turpitude in business dealings;
- d) If the firm continuously refuses to return government dues without showing adequate cause and the Government are satisfied that this is not due to reasonable dispute which would attract proceeding in arbitration or court of law, and
- e) Employs a government servant, who has been dismissed or removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt government servants or employs a government officer within two years of his retirement, who has had business dealings with him in an official capacity before retirement; or

- f) Is suspected to have doubtful loyalty to the country or national security considerations as determined by appropriate agencies of GoI.
- g) any other ground, based on which the GoI, considers that banning is in public interest.

The names of banned firms should be widely shared and uploaded on the website to prevent inadvertent business dealings by any office of GOI. CPPP portal as well as Procuring entity may be made a central repository for display of list of Banned Firms. The Ministry of Finance may centrally compile and publish the list of debarred firms on its website. An order for banning passed for a certain specified period shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation, except that an order of banning passed on account of doubtful loyalty to the country or national security considerations shall continue to remain in force until it is specifically revoked. However the firm would have to apply afresh for registration with the procuring entities.

#### ***3.5.4 Safeguarding Procuring Entity's Interests during debarment of suppliers:***

Suppliers are important assets for the procuring entities and punishing delinquent suppliers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers in a particular group of materials/equipment, such punishment may also hurt the interest of Procuring Entity. Therefore, views of the concerned department may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers and in cases of less serious misdemeanours, the endeavour should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose.

#### ***3.5.5 Holiday Listing (Temporary Debarment - suspension)***

Whenever a supplier is found lacking in performance, in case of less frequent and less serious misdemeanours (any of performance issues listed in para 3.5.2 or 3.5.3 above), the suppliers may be put on a holiday listing (temporary debarment) for a period upto six months. Suppliers undergoing process for Removal from Registration or banning/ debarment may also be put on a holiday listing during such proceedings, if so recommended by the competent authority. When a supplier is on the holiday listing, he is neither invited to bid nor are his bids considered for evaluation during the

period of the holiday. The supplier is, however, not removed from the list of registered suppliers.

The supplier automatically stands removed from the holiday listing on expiry of the holiday period.

### ***3.5.6 Debarment Procedures***

Punitive actions of various grades of debarment against the suppliers should be examined by a Supplier Discipline Committee and approved by competent authority at the level of the Deputy HOD in case of holiday listing; HOD in case of removal; and Secretary of the Department in case of banning. Due to Constitutional provisions, it should be treated as a quasi-judicial function following principles of natural justice, on lines akin to disciplinary proceedings. The departments will furnish lists of such suppliers who have committed misdemeanours listed in para 3.5.2 and 3.5.3 above to the Supplier Discipline Committee for considering various grades of debarment. On receipt of information from departments or suo moto, the Supplier Discipline Committee should take action to issue a show cause notice to such firms. The Supplier Disciplinary Committee may also order a interim debarment (Holiday Listing) during the process considering the severity of demeour. The supplier should be given adequate opportunity (including an oral hearing by the competent authority) to make representations. If the response to the show cause notice is not satisfactory or not acceptable, such firms should be put on suitable grade of debarment, depending on the severity of the misdemeanour. On such debarment, a circular shall be issued to all concerned in Procuring Entity (and recorded suitably in computer records), so that the sections (or the computerised system) do not send enquiries to such firms. In case of banning, all ministries/ departments of Government of India must be informed. Appeals would lie at a level higher than the competent authority (Secretary, DoE, Ministry of Finance, in case of banning).

## **3.6 Compulsory Enlistment of Indian Agents**

As per the Compulsory Enlistment Scheme of the Department of Expenditure, Ministry of Finance, it is compulsory for Indian agents who desire to quote directly on behalf of their foreign manufacturers/ principals, to get them enlisted with the Department of Expenditure, through the Central Purchase Organization (e.g. DGS&D). The compulsory enlistment of Indian Agents under the scheme of Ministry of Finance is simpler and differs from and is not equivalent to the registration of Indian Agents with the Central Purchase Organization (e.g. DGS&D) described in the earlier paragraphs. Such firms do not enjoy the same status as that of DGS&D registered suppliers. Moreover the registration of the foreign manufacturer is not a must for enlisting the Indian Agent under this scheme. No Inspection Report in respect of the foreign manufacturer/principal is necessary. The onus for verifying the authenticity of the agency agreement or validity of the

authority to import or compliance of any statutory requirements of import or the quality of stores to be supplied rests with the purchasers. This enlistment by DGS&D under this scheme does not certify the reasonableness of agency commission declared by the Agent. The purchasers are advised to exercise due diligence in this regard. A note to this effect is given in the Enlistment Letter to the firm.

## ***Chapter 4: Modes of Procurement and Bidding Systems***

### **4.1 Modes of Procurement**

Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand. Different modes of procurement and bidding systems are used to suit various procurement circumstances to achieve this balance. There are laid down procedures for delegation of powers of procurement to various competent authorities under different modes as shown in DPFR. Each procuring entity may also publish its own Schedule of Procurement Powers (SOPP) delegating such powers within the entity.

However, as mentioned in Para 1.3 (Applicability of this Manual), for procurements financed by Loans/Grants extended by International Agencies, like the World Bank, Asian Development Bank etc., the procurement procedures, as finalized and incorporated in the Articles of Agreements with such agencies for relevant Loans/ grants after consideration and approval of the Ministry of Finance are to be followed.

The various modes of procurement that can be used in public procurement are:

- a) **Open Tenders**
  - a) **Open Tender Enquiry (OTE); and**
  - b) **Global Tender Enquiry (GTE)**
- b) **Procurement through Selected Suppliers**
  - c) **Limited Tender Enquiry - LTE (up to Rs. 25 lakh); and**
  - d) **Special Limited Tender Enquiry (SLTE above Rs. 25 lakh under special circumstances)**
- c) **Nomination Basis Tenders**
  - e) **Proprietary Article Certificate (PAC); and**
  - f) **Single Tender Enquiry (STE) without PAC**
- d) **Procurements without Calling Tenders**
  - g) **Withdrawals against Rate Contracts (RC);**
  - h) **Direct Procurement without Quotation;**

- i) **Direct Procurement by Purchase Committee;**
- j) **Direct Purchase by Spot Purchase Committee (SPC); and**
- k) **Purchases through Central Purchase Organisation (DGS&D) or other such agencies**

## 4.2 Open Tender Enquiry

4.2.1 In OTE, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites and in the press (newspapers and trade journals). This is the default mode of procurement and gives the best value for money but the procedure is relatively complex and prolonged. *The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.* OTE procedures through e-procurement or through traditional tendering should be adopted in the following situations:

- a) Procurements exceeding the threshold of Rs. 25 lakh (Rupees Twenty Five Lakh);
- b) All common use requirements with clear technical specifications;
- c) For requirements that are ordinarily available in the open market but it is necessary to evaluate competitive offers to decide the most suitable and economical option available; and
- d) When requirements are not available from known sources or sources are presently limited and need to be broad based. In such situations, even for procurements below Rs. 25 lakh, OTE mode may be used, if warranted.

### 4.2.3 Terms and Conditions

- a) Bidders already registered are also free to participate;
- b) The NIT shall be advertised on the websites of the Central Public Procurement Portal (CPPP). If the department has its own website/ eProcurement Portal, it should also publish all its advertised tender enquiries on such website/ Portal also. A brief advertisement (giving the website addresses for further details/downloading) in the newspaper for such NIT should be given in at least in one national newspaper having wide circulation and in the Indian Trade Journal (ITJ) published by the Director General of Intelligence and Statistics, Kolkata; and
- c) The tender documents should be prepared on the basis of the relevant approved SBD for the category of procurement. Further details on preparing tender documents are provided in Chapter 6.

d) The sale of tender documents against NIT should not be restricted and should be available for sale freely. Tender documents should preferably be sold upto the date of opening of tenders. The organization should also post the complete tender document in the web site and permit prospective tenderers to make use of the document downloaded from the web site. If the tender document is a priced one, there should be clear instructions for the tenderers in the document (which has been downloaded) to pay the amount by demand draft etc. along with the tender, prepared in the downloaded document.

e) The procuring entity shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

<b>4.2.4 OTE - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
<p>Since the crux of this mode of procurement is attracting bids from all possible prospective bidders. The risk is that this may not be achieved, even after incurring extra cost of open tendering. This could be due to</p> <ul style="list-style-type: none"> <li>• Insufficient publicity;</li> <li>• Hindrances in availability of bid documents;</li> <li>• insufficient time for bid preparation; or</li> <li>• Due to onerous cost of bid- documents or EMD</li> </ul>	<p>The publishing of NIT should be in well circulated media. It should be published in newspapers and journals that are geographically relevant to the bidders – not in obscure editions of poor circulations. It should be ensured that the NIT on the website is easily searchable and visible, not hidden under layers of clicks. The matter should not be left entirely to the website or media publicity alone. Due diligence should be done to locate likely bidders (including past bidders) and their attention should be drawn through SMS/mail/email. All registered vendors/contractors (in particular past successful vendors/contractors) should be given intimation about forthcoming tenders via SMS/mail/ email.</p> <p>Further a limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.</p> <p>It should be also ensured that there is no impediment to issue/access of bid documents.</p> <p>The due date fixed for opening of the tender shall be about 21 to 45 days from the date of advertisement which may vary, taking into account the nature of material called for and delivery requirements as well as the geographical location of the prospective tenderers. The due date may be subsequently extended with the approval of the CA, only if it is felt necessary to have better competition.</p> <p>The tender documents, shall be priced minimally (tender document fee) keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents.</p> <p>EMD should be sufficient to ensure that bidders honour their bids but at the same time should not be large enough to reduce competition.</p>
Lack of clarity in description/ specification	Mitigations of such risks can be addressed at the time of need

of requirement or undue stringency in qualifying criteria or other conditions	assessment and procurement planning (please refer to Chapter 4), so as to attract adequate competition.
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### 4.3 Global Tender Enquiry

**4.3.1** GTE is similar to OTE but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter-alia foreign firms. *The point of balance between VfM and cost/ complexity of procedure is further aggravated as compared to OTE. Development of local industry also needs to be kept in mind. Hence, it may be viable only for much higher threshold of value.* As a rough guide threshold value may be kept above Rs. 25 crore (Rupees Twenty-five Crores) in following situations:

- a) Non-existence of a local branch of the global principal of the manufacturer/vendors/ contractors;
- b) Requirement for compliance to specific international standards in technical specifications; and
- c) Absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among indigenous bidders.

#### 4.3.2 Terms and Conditions

- a) The NIT shall be advertised on the websites of CPPP and the procuring entity;
- b) If the department has its own website/ eProcurement Portal, it should also publish all its advertised tender enquiries on such website/ Portal. A brief advertisement for such purchase should be given at least in one national newspaper having a wide circulation, providing the address of the website where further details and tender documents would be available;
- c) The tender documents, shall be priced minimally (tender document fee) keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents;
- d) GTE tender documents must be in English and the price should be asked in Indian Rupees or US Dollars or Euros or Pound Sterling or Yen or in currencies under the Reserve Bank of India's notified basket of currencies;
- e) GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard;

- f) The due date fixed for opening of the tender shall be usually about four to six weeks from the date of advertisement which may vary taking into account the nature of material called for as well as the time required to prepare the bids. The due date may be subsequently extended with the approval of the CA only to promote better competition and also considering account delivery requirement; and
- g) Relevant INCOTERMS should be included in the tender.

<b>4.3.3 GTE - Risks and Mitigations</b>	
<b>Risks</b>	<b>Mitigations</b>
Risks are same as in OTE	Same mitigation as in case of OTE also applies here.
Moreover, publicity may not reach targeted foreign bidders	NIT should also be sent to commercial attachés in foreign embassies in India and to Indian embassies in relevant foreign countries for inviting the attention of likely foreign bidders. The selection of the embassies will depend on the possibility of availability of the required goods in such countries.
Involvement of agents of foreign bidders in GTE procurements is also a major risk area	Procurements should preferably be made directly from the manufacturers. Either the agent on behalf of the foreign principal or the foreign principal directly could bid in a tender, but not both. Further, in cases where agents participate in a tender on behalf of one manufacturer, they should not be allowed to quote on behalf of another manufacturer along with the first manufacturer. Commissions and scope of services to/by the agents should be explicit and transparent in the bids/contracts

## **4.4 Limited Tender Enquiry (LTE)**

4.4.1 LTE is a restricted competition procurement, where a preselected list of vendors is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. *This mode provides a short and simple procedure, but may not provide as good a VfM as in case of open tendering – still a good balance for procurements below a threshold. LTE procedures should be default mode of procurement when the estimated value of procurement is between Rs. 1 lakh to Rs. 25 lakh (Rs one Lakh to Twenty-five Lakh).* The bidding documents are simplified (mostly a single page with terms and conditions printed overleaf).

### **4.4.2 Terms and Conditions**

- a) Copies of the bidding documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/courier/e-mail to firms which are registered vendors/ contractors; and
- b) A simplified single Page Bid Document (Annexure 5) should be used, instead of a detailed Bid Document. The minimum number of bidders to whom LTE should be sent is more than

three. In case less than three approved vendors/contractors are available, LTE may be sent to the available approved vendors/contractors with approval of the CA, duly recording the reasons. The requirement should then be marked for development of more sources by the Supplier Registration section.

<b>4.4.3 LTE - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
Major risk in this mode is that the demand may be artificially split to avoid OTE or higher level approvals	The e-procurement portal may be programmed to raise an alert if the same item is attempted to be procured through LTE repeatedly. Audit should take up a larger percentage of cases in LTE for review.
There is a risk that LTE may not attract sufficient number of bids and sometimes there may be a single acceptable offer. This may be because of an insufficient database of registered/known vendors. It could also be due to bid documents not reaching the targeted bidders – intentionally or otherwise. It could also be due to bidders not getting adequate time for submission of bids.	Maintenance of list of registered suppliers is a sine-qua-non for LTE. The List of registered vendors needs to be reviewed perpetually to ensure adequate number of qualified suppliers. To ensure sufficient response, in addition to mails/emails to selected vendors, web-based publicity should be given for limited tenders, with suitable clarifications that unsolicited bids shall not be considered. Further a limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.  Adequate time should be given for submission of quotes, which should not be less than three weeks. A longer period (six weeks) could be given in case of import of the materials and, in complex cases, if justifications are given and allowed.
There is also a risk that the selection of vendors may not be transparent. On the other hand, unsolicited bidders may also quote – causing a transparency dilemma about consideration of such offers. At the evaluation stage, some invited bidders may be passed over on grounds of being ineligible/ unreliable.	All major procuring departments must keep a list of registered bidders for use in restricted bidding. Suppliers or contractors should be selected in a non-discriminatory manner. All past successful vendors/bidders should invariably be invited. The selection of bidders should be with due diligence, to ensure that bidders who do not meet eligibility criteria do not get shortlisted. At the evaluation stage, in LTE, passing over of a duly shortlisted bidder on grounds of poor past performance or eligibility may raise questions about transparency. In case it is proposed to exclude any registered/approved vendor/ contractor, detailed reasons, such as failure in supply, should be duly recorded and approval of the CA be taken before exclusion.

## 4.5 Special Limited Tender Enquiry for Procurements More than Rs. 25 Lakh

**4.5.1** LTE mode, even for values higher than Rs. 25 lakh (Rupees Twenty-five Lakh), where normally OTE should have been done, is permissible in certain special circumstances as follows.

Powers to sanction procurement on LTE basis in such special cases may be laid down in SoPP based

on a certificate of urgency signed by the indenter. *This mode has the merit of being quicker but VfM obtained may be less than in case of OTE; hence it should be restricted to rare situations:*

- a) The competent authority in the Ministry / Department certifies that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry / Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier.
- b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.
- c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
- d) Nature of items to be procured is such that pre-verification of competence of firm is essential, hence requires registration of firms.; and
- e) Government policy designates procurement from specific agencies.

#### **4.5.2 Terms and Conditions**

- a) The tendering process would be same as in the case of a normal LTE described above. However, the bidding documents are more detailed as in the case of OTE; and
- b) The indenter should certify that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through an advertised tender enquiry is justified in view of urgency. The indenter should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.

#### **4.5.3 SLTE - Risks and Mitigations**

<b>Risk</b>	<b>Mitigation</b>
Risks as applicable in both LTE and OTE are also applicable here. In addition there is a risk that this mode may be used unjustifiably to avoid open tendering (OTE).	All mitigation strategies of LTE and OTE would apply here also. In addition the systems of checks and balances should be tighter by way of enhanced and severely restricted delegation of powers in this regard for certification of urgency and approval of this mode of procurement. A system of reports from the authority signing the urgency certificate and post facto review of utilisation of received goods/works/services to tackle the expressed urgency may be laid down. Audit should take up the bulk of

	such cases for review to judge the genuineness of urgency certification.
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## 4.6 Proprietary Article Certificate

**4.6.1** In procurement of goods, certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/stockists) against a PAC certificate (Annexure 6) signed by the appropriate authority. Once a PAC is signed at the designated level as per SoPP, the powers of procurement are the same as in normal conditions as per the delegation of powers. *This mode may be shortest but since it may provide lesser VfM as compared to LTE/OTE and also strains the transparency principle, it should be used only in justifiable situations.*

### 4.6.2 Terms and Conditions

- a) Users should enclose, with their Indent, a PAC certificate indicating the justification and approval at the appropriate level as per DPFR/ SoPP, for sourcing an item from OEM or PAC firms or their authorised agents;
- a) Proprietary items shall be purchased only from a nominated manufacturer or its authorised dealer as recorded in the PAC certificate;
- b) In certain unavoidable cases, the procuring authority may have no alternative but to waive payment of EMD/ SD for procurement on a proprietary basis;
- c) To the extent feasible, the firm may be asked to certify that the rates quoted by them are the same and not higher than those quoted with other government, public sector or private organisations;
- d) In case of PAC/single tender procurements<sup>19</sup>:
  - Reports relating to such awards should be submitted to the Ministry every quarter;
  - Internal audit may be required to check at least 10 per cent of such cases; and
  - Details of such contracts should be published on the website of the Procuring Entity.

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<sup>19</sup> <http://cvc.nic.in/005crd19.pdf>; <http://cvc.nic.in/OfficeOrderNo23-7-07.pdf>;  
<http://cvc.gov.in/Transparency20052010.pdf>

<b>4.6.3 PAC - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
There is a risk that this mode may get used unjustifiably to restrict competition. Such risks get aggravated, in case of secrecy about such procedures as alternative vendor/contractors may not even come to know about such opportunities	The delegation of powers should be restricted for signing of PAC. Audit may take-up 10 per cent of cases of PAC procurements for review. Even in PAC procurements the NIT and the Award of Contract should be put on the website of CPPP and Procuring Entity.
Once approved, there is a risk of a nexus getting developed and the mode may continue to be used for many years, without fresh application of mind	No item should be procured on PAC basis for more than three years, after which a mandatory OTE mode may be used, to test the market
The bidder may charge a price higher than the market	The firm should be asked to accept a "fall clause" undertaking that, in case it supplies or quotes a lower rate to other governments, public sector or private organisations, it would reimburse the excess. Negotiations may be called for to get prices reduced

## **4.7 Single Tender Enquiry (STE) without a PAC**

**4.7.1** A tender invitation to one firm only without a PAC certificate is called a single tender. *This mode may be shortest but since it may provide lesser VfM as compared to LTE/OTE and may also strain the transparency principle, it should be resorted to only under following conditions:*

- a) In a case of existing or prospective emergency relating to operational or technical requirements to be certified by the indenter, the required goods are necessarily to be purchased from a particular source subject to the reason for such decision being recorded and approval of the competent authority obtained.
- b) For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/equipment (on the advice of a competent technical expert and approved by the competent authority), the required goods are to be purchased only from a selected firm.

### **4.7.2 Terms and Conditions**

- a) The reasons for a STE and selection of a particular firm must be recorded and approved by the CA as per the delegation of powers laid down at in DPFR/SoPP, prior to single tendering. Unlike in PAC, powers of procurement of STE are more restricted; and
- e) Other terms and conditions of PAC procurement mentioned above would also apply in this case.

<b>4.7.2 STE - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
Same but more heightened risks than PAC are present in this mode. Selection of a single vendor may be non-transparent and unjustified	Same mitigation strategies as in the case of PAC should apply. Procurements on a STE basis should be made from reputed firms after determining reasonableness of rates. Powers of procurement of STE should be severely restricted.

## **4.8 Withdrawal against Rate Contract (RC) / Framework Contract (FC)**

**4.8.1** RC is essentially a price agreement with the vendors/contractors at a specified price and terms and conditions during the period covered by the RC. No quantity is mentioned nor is any minimum commitment guaranteed in the RC. RC is most frequently used in procurement of goods, but can as well be used mutatis mutandis in works, services and consultancy – where it is commonly known as a Framework Contract (FC). *For appropriate items (please see para 4.8.3 below), Withdrawal against an existing RC exploits the power of collaboration/ clubbing of numerous small and frequent requirements and thus provides best VfM along with a simple and quick procedure.* However, entering into a new RC may have the same procedural complexity, prolonged timeframe and systemic cost as in OTE, which may not be viable for low volumes. Director, General Supplies and Disposals (DGS&D) enters into RC for commonly used goods. In case items are not covered in such RCs or if it is decided by the Procuring Entity to conclude their own RC, then RC should be finalised through procurement procedures for an open tender as per the delegation of powers based on the estimated value of the annual off take. The detailed procedure for conclusion of such rate contracts has been incorporated under Chapter 8.

### **4.8.2 Terms and Conditions**

- a) The Central Purchase Organization (e.g. DGS&D) will conclude rate contracts with the registered suppliers, for goods and items of standards types which are identified as common user items and are needed on recurring basis by various Ministries / Departments. The Central Purchase Organization (e.g. DGS&D) is to post the specifications, prices and other salient details of different rate contracted items, appropriately updated, on its web site for use by the procuring Ministries / Departments
- b) Responsibility for reasonableness of rates in RCs lies with the DGS&D. All parallel RCs for an item, even at differential rates, are at reasonable rates and the Procuring Entity is free to select any one of the RC holder.

- c) The Ministries / Departments are to operate those rate contracts to the maximum extent possible. However, direct procurement through other modes of procurement of items on RC may be allowed for small requirements up to Rs. 1 Lakh (Rupees One Lakh) in each instance, subject to an upper limit of Rs. 5 lakh (Rupees Five Lakh) for each item in a year per Head of Office. In case a Ministry / Department directly procures Central Purchase Organization's (e.g. DGS&D's) rate contracted goods from suppliers, the prices to be paid for such goods shall not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase should be in line with those specified in the rate contract. The Ministry / Department shall make its own arrangement for inspection and testing of such goods where required; and
- d) For utilising DGS&D's rate contracts, Procuring Entity may approach DGS&D and get its officers listed as Direct Demanding Officers (DDOs). The guidelines for DDOs and consignees regarding DGS&D's RC are laid down in "General Terms and Conditions governing the Rate Contract and Instructions to Direct Demanding Officers and Consignees" (Form DGS&D – 1001). Supply orders against DGS&D RCs and its amendments are placed only on DGS&D's own e-Procurement portal using digital certificates. The indentor has to log in with a given ID and password, select the item and RC, etc., from drop down lists and add other details as guided by the website. This generates digitally signed supply orders which are transmitted to the RC holder and DDO. Before creating the supply order online, approval of the CA (depending on the value of procurement) may be taken on file, by submitting information about all the available RCs (these can be downloaded from the DGS&D website) and justifying the selection of a particular RC holder. DGS&D offers optional facility to get inspection and payments done through DGS&D, if the buyer so desires. There is sufficient guidance available on the website for the indentor to accomplish these tasks easily;

#### **4.8.3 Rate Contracts - Risks and Mitigations**

<b>Risk</b>	<b>Mitigation</b>
<p>Risk Purchase is not a right mode of procurement for critical, strategic and vital requirements, since the buyer – seller relationships is tripartite and the timely supply of requirements and penalties thereof can be so strictly enforced as in other modes of procurements. Moreover the RC holder is more beholden to the Central Purchase Organisation than to end-customer.</p> <p>In situations of items with inadequate annual or seasonal capacities in market, the RC holders may dump material on Procuring entity at wrong seasons and starve them in working seasons. This happens in</p>	<p>RCs may be avoided for critical/ strategic and vital requirements. Central Purchase Organisation may also tighten up enforcement of delivery performance and penalties thereof.</p> <p>For seasonal and short-supply items CPO may monitor and provide clauses to prevent dumping and starving of supplies.</p> <p>In Technologically fast changing products, CPO may keep watch on the market and renegotiate prices as soon as market prices crash due to new arrivals.</p>

<p>say Cement, when Government Buyers are likely to be saddled with huge supplies during rainy season, but RC holders may divert bulk of supplies to private market in working season.</p> <p>RC Purchase is not suitable for requirements of dynamic Technological and price changes e.g. PCs, Laptops, Tablets, Servers, Mobile Phones – where the price of older models may crash as soon as a model is announced. RC holders may slow down supplies initially, but dump supplier when prices crash in the market.</p>	
<p>The existence of RCs may not be adequately made known to possible users. Moreover, the reverse risk is that many different offices may keep procuring the same item independently, thus missing the potential benefits of bulk prices and simplified processes if such items were brought under an RC</p>	<p>The descriptions, specifications and other salient details of all RC appropriately updated, should be available on the website of DGS&amp;D and Procuring Entity as well as the e-Procurement portal. The e-procurement system should be able to offer alerts about availability of RC, if an attempt is made to float a tender for the same item. To derive benefit from bulk prices in RC, all offices should furnish to the RC agency, their annual requirement of items to enable finalising of RCs after inviting quotations.</p>
<p>RC procurements are at risk of being ordered in excess of actual requirements, since the procurement scrutiny may not be as intense as in case of other modes of procurements.</p>	<p>The quantity being ordered should be subject to the same level of scrutiny as in other modes of procurement to ensure that there is no abnormal unexplainable trend in procurement.</p>
<p>Wherever there are parallel RCs for the same item from a number of firms, there may be intense and often unhealthy lobbying (including corrupt practices) from them to seek orders.</p>	<p>Departments must put in place adequate guidelines to handle RC procurements, including a transparent system of choosing the RC holders by rotation in a transparent manner in case of parallel RCs. The delegation of powers in this regard should also be restricted keeping these risks in view. A suggest guidelines is given below:</p> <p>1 For selecting the DGS&amp;D Rate contract holders for ordering, following factors may be kept in view:</p> <ul style="list-style-type: none"> <li>(i) The Rate Contract Price;</li> <li>(ii) The past performance of firm with reference to their capacity, quality of supplies as well as timely delivery of the goods;</li> <li>(iii) The delivery date committed by the firm with respect to the delivery requirement of the Procuring Entity;</li> <li>(iv) The proximity of the rate contract holder wherever the proximity is considered crucial for timely delivery, ease of progressing and from the point of view of logistics and contract management etc.; and</li> <li>(v) The need for reputed brands in the case of sensitive, critical and selective applications.</li> <li>(vi) In case of number of firms meeting such criteria, orders may be split or rotated in a</li> </ul>

	<p>transparent manner.</p> <p>2. The Procuring Entity should maintain suitable records of RC firms for past performance in respect of timely delivery and quality.</p> <p>3. Wherever, there are failures against the rate contract in terms of timely delivery and quality of goods, such failures should be reported to DGS&amp;D and direct alternate procurement action may be taken in order to ensure timely availability of quality materials to meet the needs of the Procuring Entity.</p>
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## 4.9 Direct Procurement without Quotation

**4.9.1** Direct procurement of goods without formal quotations is normally done for the smallest value procurements. This is also called petty purchase. It should be used for off-the-shelf goods of simple and standard specifications. *The procedure is the simplest and quickest but VfM may be poor; hence it is suitable only in very low value, urgent and simple requirements in the following situations:*

- a) Procurements do not exceed the threshold (for each requirement) of Rs. 15,000 (Rupees Fifteen Thousand) for each case;
- e) The requirement is urgent but was not covered in the procurement plan; and
- f) The requirement is for off-the-shelf goods of simple and standard specifications. Examples of procurement are day-to-day needs of the office and field units, and so on.

### 4.9.2 Terms and Conditions

- a) The competent officer of the procuring entity can initiate and complete this purchase after diligent enquiries from the market and filling the certificate prescribed (Annexure 7). Such powers to a limited extent can also be given to various user sections for operational needs.
- b) Normally an imprest amount (with facilities for cheque payments) sufficient for two months' estimated procurements can be sanctioned for such officers to handle such procurements. The imprest amount can be recouped on monthly basis by submission of expense vouchers.
- c) In a summary form, records should be kept of the vendors/contractors approached and prices indicated by them.
- d) Selection of seller by diligent market enquiry (not by way of collection of quotations in any form) is of essence of this mode of procurement.
- e) In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

<b>4.9.3 Direct Procurement without Quotations - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
The main risk is splitting of demand to avoid higher approvals or higher modes of procurements.	Supervisors should carry out period review of such procurements to ensure that the demand is not split into small quantities for the sole purpose of avoiding the necessity of getting an approval from the higher authority required for sanctioning the purchase of the original demand or for avoiding LTE or OTE mode of procurement. An annual review of such procurements shall be carried out to ensure that future anticipated requirements are clubbed and procured through LTE/ OTE/ RC.  To keep a better control, an annual ceiling may be fixed for each office for such a mode of procurement say Rs. 5 lakh (Rupees 5 Lakh) for each office per year Each office should maintain records to monitor such limits
Over a period of time intentionally or otherwise, the due diligence of enquiries from market may degenerate into a mechanical obtaining of quotations, leading to development of nexus and crony suppliers. Vendor selection may actually be manipulated with fake supporting vouchers. Since such small value materials do not undergo accounting and inventory control, the risk of development of a nexus, leakages and fake procurements and payments are there. The same set of vendors may get patronised repeatedly for a wide variety of requirements. Since only cursory visual inspections are done, quality may be at risk.	Supervisors should cross check a percentage of cases in the market for prices, fake vouchers, and so on. Supervisors should also check that the same vendor(s) is not being patronised repeatedly. For the sake of transparency, payments should be made by cheque or through Electronic Clearance Service except that cash payment may be allowed up to Rs. 5,000. Staff involved with such procurements should not continue in the same role for long and should be rotated frequently.

## 4.10 Direct Procurement by Purchase Committee

**4.10.1** This mode of procurement is used for procurements valued above Rs 15,000/- (Rupees Fifteen Thousand) and upto Rs. 1,00,000 (Rupees One Lakh) only on each occasion. It is made by a local purchase committee constituted by HOD by. This mode of procurement is described in parlance of procurement of goods; however, in principle, it is equally applicable to contingency expenditure on small works/services also. *This procedure is slightly more complex and is likely to provide better VfM than direct procurement without quotation and hence is suitable for marginally higher thresholds*

### 4.10.2 Terms and Conditions

- a) The controlling ministry may lay down an annual ceiling value per office/unit for such procurements;

- b) In case of emergency procurement, facility of withdrawing requisite advance cash amount and its subsequent account may also be considered.
- c) This is intended to be fast track, simple mode of procurement. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier.
- d) Selection of suitable product and supplier by actual market survey (not by calling of tenders like a mini LTE) is of essence of this mode.
- e) Before recommending placement of the purchase order, members of the committee will jointly record the certificate prescribed (Annexure 8); and
- f) In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

<b>4.10.3 Direct Procurement by Purchase Committee - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
Risks are the same as in the case of direct procurement without quotation mentioned above, with mitigation due to involvement of three members. Over a period of time intentionally or otherwise, the due diligence of enquiries from market may degenerate into a system of floating and obtaining of limited tenders, leading to delays, development of nexus and crony suppliers.	Mitigation strategies are also the same as in direct procurement without quotation.

## **4.11 Direct Procurement by Spot Purchase Committee**

**4.11.1** In procurement of goods for values between Rs. 1 and 10 lakh (Rupees One to Ten Lakh), in each case, procurement involving aesthetic evaluation (such as in wooden furniture, works of decoration/ art, cutlery/fine china, household/kitchen/hospitality/home requirements and electronics, and so on, required for official or Guest Houses use) where specifications cannot be drawn and these requirements cannot be effectively procured through a tendering process, may be done on the lines of Direct Procurement by Purchase Committee, without calling tenders through the formation of the SPC as per the delegation of powers procedures. Moreover, in certain Commercially-off-the-Shelf (COTS) goods/ equipments; personal issue items/ tools for employees/ officers and the like, there is a wide actual or perceived variation in the quality/ value of products on offer, though all of these may claim conformity with prevailing specifications. For such items also, within the specified monetary limit, the HOD of the user department may certify that it would be in the interest of the Organisation to procure these items of suitable quality through SPC. This mode of procurement can also be used for other type of requirements, in cases of serious emergency or

urgency. *This procedure is less complex but is likely to provide less VfM than LTE/ SLTE and also strains the transparency principle hence is suitable only in rare situations with restricted and stringent delegation of powers.*

#### **4.11.2 Terms and Conditions**

- a) The composition of SPC (usually three members) would be decided by HOD or as indicated in SoPP;
- b) The committee will survey the market to identify appropriate products of comparable quality and specifications and locate as many different and independent suppliers for such products as possible but not less than three in any case. These identified Suppliers may be asked to submit quotations in a transparent manner. Depending on circumstances, quotations may be submitted via email, telex or fax, if so specified. In larger cities, the presence of reputed Shopping Malls may also be included in the market survey.
- c) Before recommending placement of the purchase order, members of the committee will jointly record the certificate prescribed (Annexure 8); and
- d) Records should be maintained of such a survey of the market as well as products and Suppliers evaluated.

#### **4.11.3 Direct Procurement by SPC - Risks and Mitigations**

<b>Risk</b>	<b>Mitigation</b>
Risks are same as in the case of direct procurement without quotation mentioned above, with mitigation due to involvement of a committee. This mode is prone to be misused for requirements for which LTE/ SLTE may be a proper option.	Mitigation strategies are also the same as in direct procurement without quotation. The intention of procuring requirements through SPC may be adequately publicised on the website, so that prospective vendors/contractors may approach the SPC for including them in the market survey. The delegation of powers should be severely restricted and a transparent procedure to be followed by the SPC should be laid down. Audit should take up bulk of such procurements for review.

### **4.12 Purchase through Central Purchase Organisation or other Organizations**

4.12.1 Although adhoc procurement by DGS&D has been decentralised Departments/ Organisations, who have not built-up their own infrastructure for purchase, may send its indents to the Central Purchase Organization (e.g., DGS&D) for procurement on its behalf with the approval of its Secretary (or an officer to whom such powers have been re-delegated). Similarly Indents may also be placed on other Canalized agencies authorised by the Government or other Government Ministries/ Departments, if mutually agreed. *Procurements by such agencies would have to conform*

*to these Procurement Guidelines.* Possibilities of other Ministries/ Departments or Sister Organisations having spare-able quantities of required material may be explored. In such cases Indents can be placed on them for supply of requirements, at mutually agreed terms.

#### **4.12.2 Terms and Conditions**

- a) Usual formalities for Preparation, Budgetary Provisions and approval/ signing of Indents
- b) The Indent in such cases, in the format prescribed by such Organisations, should be signed by an officer to whom such powers have been delegated.
- c) FA of the Department may sign a declaration about availability and reserving of Budgetary provisions required
- d) Modalities of Procurement, Inspection, Tracking of Supplies and Payment may be settled with the Organisation

#### **4.11.3 Purchase through CPO - Risks and Mitigations**

<b>Risk</b>	<b>Mitigation</b>
Since it is a purchase by a third party, the Indent must be detailed and self-sufficient to ensure all Technical and Commercial requirements.	Mitigation strategies are to ensure vetting and certificates from technical, finance and procurement wing about completeness of Indent, before despatch. In critical and large procurements, liaison may be maintained with the procuring organisation.
There is also a risk of delays in finalisation of contract by the Procuring Entity, which may not be responsive to indenting organisations urgencies, especially if procurement involves clubbing of Indents from a number of organisations.	To mitigate such risk liaison may be maintained with the Procuring Entity. In case abnormal delay is taking place, small procurement to tide over urgencies may be made directly.
Another risk is that the Supplier may not feel answerable to the Indenter and may not be responsive towards delivery, quality and after sales support. If problems arise, it may require a dilatory tripartite correspondence.	To mitigate this, proper commercial clauses may be included in the Indent to ensure responsiveness of supplier to the Indentor. Liaison with Procuring Organisation would also mitigate such risks.

#### **4.13 Bidding Systems**

Bidding systems are designed to achieve an appropriate balance between the countervailing needs for Right Quality, Right Source and the Right Price under different complexities/ criticality of Technical requirements and value of procurements. In certain critical and complex requirements, the technical and financial capability of Source of supply becomes an important determinant for value for money. Depending on the complexity and criticality Technical of requirement, Criticality of capability of Source and value of procurement, following types of bidding systems may be used.

## 4.14 Single Stage Bidding System

In single stage bidding, all bids are invited together in a single envelop or in multiple envelops system. This bidding system is suitable where technical requirement are simple or moderate; capability of source of supply is not too crucial and the value of procurement is not too high;

**4.14.1 Single Stage Single Envelop System:** Where qualitative requirements and technical specifications are clear; capability of source of supply isn't critical and value of procurement is low or moderate, the single envelop system, where eligibility, technical/ commercial and financial details are submitted together in the same envelop may be followed. This is the simplest and the quickest bidding system and should be the default system of bidding. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful.

**4.14.2 Single Stage Two Envelops System:** In technically complex requirements but where capability of source of supply is still not crucial and value of procurement is not low, a two envelop system may to be followed.

1. The tenderers should be asked to bifurcate their quotations in two envelops. The first envelop, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelop, called the financial bid, the price quotation along with other financial details are submitted. Both the envelops are to be submitted together in a sealed outer envelope;
2. If required, Technical specification and techno-commercial conditions should be modified, in a pre-bid conference in the two envelop tender and it would be desirable not to invite fresh financial bids after opening of the techno-commercial bids;
3. The techno-commercial bids are to be opened in the first instance on the bid opening date and time, and scrutinised and evaluated by the TC with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided;
4. Thereafter, in the second instance, the financial bids of only the techno-commercially compliant offers (as decided in the first instance above) are to be opened on a pre-announced date and time for further scrutiny, evaluation, ranking and placement of contract. The financial bids of unacceptable bidders should be returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery;

**4.14.3 Single Stage Multiple Envelop System with pre-qualification:** As discussed below, where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high, instead of a separate stage of Pre-Qualification bidding (as described below, a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelop in a three envelop single stage bidding, so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him. Strictly speaking, this is not a pre-qualification but a Post-qualification of bidders. In the first instance on the bid opening date only the PQB envelops (also containing the EMD and other eligibility documents) are opened and evaluated to shortlist the responsive bidders who pass the Pre-qualification. Rest of procedure is same as two envelop system for only qualified bidders. Rest two envelops of unqualified bidders are returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery;

#### **4.14.4 Pre-qualification Bidding (PQB)**

1. In complex technical requirements where capability of source of supply is crucial (for example in procurement of complex machinery and equipments), for the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated since their bid price is likely to be higher commensurate with their higher capability infrastructure. Such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelop bidding – please refer para above). In PQB stage, competent qualified tenderers are shortlisted by using a Pre-qualification Criterion (PQC – for example, i) past experience of similar contracts, ii) performance capability and iii) financial strength) prior to the issue of the bid document exclusively to shortlisted bidders in the second stage. Pre-qualification Bids (PQBs) should meet the norms of transparency, fairness and maintenance of competition. *Since PQB system may strain the transparency principle and there is heightened risk of cartelization among shortlisted bidders, PQB should be done only as an exception under specified circumstances. It should not be a routine/ normal mode of procurement of goods and an eligibility criteria clause as part of single/two envelop/cover tendering should suffice in normal/ routine situations. PQB bidding as a separate stage is contraindicated in the following circumstances:*

- i). Where procurement can be done through limited tender enquiries;

- ii). Where the Procuring Entity has at least three registered bidders of the category and grade matching tendered scope of procurement and financial limit;
- iii). Where the requirement is technically and commercially simple enough that pre-qualification of the bidder is not crucial for the performance of the contract, for example, Commercially Off The Shelf (COTS) requirements; and
- iv). *Where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high. A clear-cut, fail-pass post-qualification criteria can be specified in a three envelop single stage bidding (instead of two stage bidding), so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him.*

2. **Pre-qualification Criteria:** PQC should be unrestrictive enough so as not to leave out even one capable vendor/contractor. Otherwise, it can lead to higher prices of procurement/works/services. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable vendor/contractor and thus vitiate fair competition for capable vendors/contractors to the detriment of the buyer's objectives. A misjudgement in either direction may be detrimental. Certain guidelines<sup>20</sup> regarding the framing of PQC have been laid down. A sample PQC is given in Annexure 9. Due consideration should be given while framing PQC, to its effect on adequacy of competition. To encourage MSEs, past successful bidders, a call may be taken – whether PQC should apply to full quantity/packages or be proportional to part quantity/package quoted by a bidder. In case requirement is suddenly a multiple times the past procurements, blind adoption of past PQCs may lead to disqualification of successful past vendors leading to inadequate competition. PQC should therefore be carefully decided for each procurement with the approval of CA for acceptance of the tender. It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria.

3. **Advertisement and Notification:** The invitation for PQB shall be processed (advertised, bid document preparation, publicity and evaluation, and so on) in the same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. The PQB documents should also indicate a complete schedule of requirements for which this PQB is being done, including approximate likely quantities of requirements. A minimum period of

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<sup>20</sup> <http://cvc.nic.in/six.pdf>

45 days may be allowed for the submission of PQBs. In the case of urgency, duly approved by CA, the time limit may be reduced to 30 days.

4. **Evaluation:** At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the successful bidder, may be verified as per eligibility criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. The procuring entity shall evaluate the qualifications of bidders only in accordance with the PQC specified and shall give due publicity to the particulars of the bidders that are qualified on the relevant portals/ websites.
5. **Subsequent Procurement Tender:** The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition. During the period of such validity, the procuring entity shall invite bids for procurement (Request for Proposals – RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the pre-qualification approval and floating of the linked main procurement tender is less than six months.

#### ***4.14.5 Pre-Qualification Bidding – Risks and Mitigations:***

<b><i>Risk</i></b>	<b><i>Mitigation</i></b>
<b>Pre-qualification criteria:</b> PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements and neither is very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. Also, there should be fair competition.	<b>Lay down</b> criteria when prequalification in single stage or two stage bidding is warranted. Also lay down model PQC criteria for different types of procurements.
<b>Dangers of Anti-competitive bidding:</b> Since in a two stage PQB, shortlisted bidders are announced, there is heightened possibility of these bidders forming a cartel and quoting anti-competitive prices in the second stage of bidding.	Two stage PQB should be done only in appropriately justified situations. Alternatively Single Stage multiple envelop system may be used for prequalification, in which chances of anti-competitive behaviour and time-taken is significantly lesser.
<b>Two Stage PQB</b> is a time-consuming process.	
<b>Contentious and Disputes:</b> Both the successful and unsuccessful bidders tend to view PQB process as a means for creating rights/ privileges/ entitlement for them by way of hair-splitting, contentious or viciously legalistic interpretations of PQC criteria, disregarding the very rationale of the PQB and PQC.	In the PQC a caveat against such tendencies may be included, asserting the right of procuring agency to interpret the PQC on common usage of terminologies and phrases in public procurement instead of legalistic and hair-splitting judgements and that their decision in this regard would be final.

#### **4.15 Two Stage Bidding - Expression of Interest Tenders – Market Exploration**

4.15.1 There are instances where the equipment/ plant to be procured is of complex nature and the procuring organization may not possess the full knowledge of either the various technical solutions available or the likely sources for such products in the market. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring upgradation of technology & capacity building- it would be prudent to invite a two-stage Expression of Interest (EOI) Bids and proceed to explore the market and to finalise specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner. Expression of Interest (EoI) bids may be invited in following situations:

- i). It is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;
- ii). The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
- iii). The procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of requirements in quantities sufficient to establish their commercial viability or to recover research and development costs; or
- iv). The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.

4.15.2 The procedure for two stage bidding shall include the following, namely:

- i). In the first stage of the bidding process, the procuring entity shall invite EOI bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc without a bid price. On receipt of the Expressions of Interest, technical discussions/presentations may be held with the short-listed manufacturers/suppliers, which are *prima facie* considered technically and financially capable of supplying the material or executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions,. During these technical discussions stage the procurement agency may also add those other stakeholders in the discussions who could add value to the decision making on the various

technical aspects and evaluation criteria. Based on the discussions/presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality benchmarks, warranty requirements, delivery milestones etc., in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/presentations and the process of decision making should be kept;

- ii). In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, the procuring entity shall not modify the fundamental nature of the procurement itself;
- iii). In the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and
- iv). Any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.
- v). *If the procuring entity is of the view that after EOI stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of EOI stage and it may be so declared in the EOI document ab-initio. Thereafter in the second stage, normal OTE/ GTE bidding may be done. Such variant of EOI is called 'Non-committal' EOI.*

**4.15.3 Invitation of EoI Tenders:** In EoI tenders, an advertisement inviting expression of interest should be published. The invitation to the EoI document should contain the following information:

- i). A copy of the advertisement;
- ii). **Objectives and scope of the requirement:** This may include a brief description of objectives and broad scope of the requirement. It may also include the validity period of empanelment;

- iii). **Instructions to the bidders:** This may include instructions regarding the nature of supply, fees for empanelment (if any), last date of submission, place of submission and any other related instructions;
- iv). **Formats for submission:** This section should specify the format in which the bidders are expected to submit their EoI;
- v). The EoI document should be made available to the interested bidder as a hard copy as well as on its website in a downloadable form; and
- vi). **Eligibility criteria:** The invitation to EoI should clearly lay down the eligibility criteria, which should be applied for shortlisting. Supporting documents required need to be clearly mentioned. An example of EoI eligibility criteria is shown in Table 1. However, appropriate eligibility criteria have to be designed, keeping in mind the specific objectives of the EoI.

**Table 1: An example of EoI eligibility criteria**

<b>Criteria</b>	<b>Sub-criteria</b>	<b>Weightage*</b>	<b>Break-up of Weightages</b>
Past experience of the firm with similar requirements		A*	
Financial strength of the vendor		B*	
	Turnover figures of the last three years		B1*
	Net profit figures of the last three years		B2*
Quality accreditations, licensing requirements		C*	
Manufacturing capabilities/tie-ups		D*	
After-sales support infrastructure		E*	
Product support		F*	

\* Weightages (out of 100) should be pre-decided and declared in EoI documents by the CA based on assessment of the required profiles of the potential bidders. The marking/grading scheme for allotting marks (out of 100) for various parameters should also be laid down.

- c) **Evaluation of EoI:** The bidders should be evaluated for shortlisting, inter-alia, based on their past experience of performance in a similar context, financial strength and technical capabilities, among others. Each bidder should be assigned scores based on the sum of marks obtained for each parameter multiplied by the weightages assigned to that parameter. All bidders

who secure the minimum required marks (normally 60 per cent) should be shortlisted. The minimum qualifying marks should be specified in the EoI document. Alternatively, instead of weighted evaluation, the EoI document may specify a 'fail-pass criteria' with the minimum qualifying requirement for each of the criteria, such as minimum years of experience, minimum number of assignments executed and minimum turnover. Under such circumstances, all bidders who meet the minimum requirement, as specified, should be shortlisted. The short list should normally comprise at least four firms.

#### 4.16 Electronic Procurement (e-Procurement)

The Procurement Policy Division, Department of Expenditure, MoF, has vide Office Memorandum no: 10/3/2012-PPC dated January 9, 2014<sup>21</sup> prescribed mandatory processing of e-procurement mode for tenders valued above Rs. 2 lakh. National Informatics Centre (NIC) has an e-Procurement portal called Government eProcurement of NIC (GePNIC). There are other service providers in Public Sector (e.g. MSTC) and Private sector which can be utilized for e-Procurement. Details about the process of e-procurement are available from the service providers. *Appendix 3 also gives such details.*

#### 4.17 Electronic Reverse Auction (RA)

Electronic Reverse Auction is a type of auction (classified as dynamic procurement method) where the starting price, bid decrement, duration of auction, maximum number of automatic extensions are announced before start of online reverse auction. If required, RA may be preceded by an eProcurement stage of eligibility/ PQB to shortlist competent bidders who would be allowed to participate in the RA. The shortlisted bidders can after the start of RA start bidding online in an iterative process wherein the lowest bidder at any given moment can be displaced by an even lower bid of a competing bidder, within the duration of the RA. If a new lower bid is received within last few minutes (say 2 minutes) of closing time, the closing time may get automatically extended by few minutes (say 5 minutes) for others to respond. Maximum number of such extensions may be stipulated (say 5). The most favourable bid at the end of stipulated / extended time is declared as successful. While permitting use of RA, CVC has asked the departments/ organisations to themselves decide on reverse auction for purchases or sales and work out the detailed procedure in this regard<sup>22</sup>. It has, however, to be ensured that the entire process is conducted in a transparent and

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<sup>21</sup>[http://eprocure.gov.in/cppp/sites/default/files/instruction\\_contents/INST\\_DOC\\_NO\\_1/eProcurement0901208.4.pdf](http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_1/eProcurement0901208.4.pdf)

<sup>22</sup><http://cvc.gov.in/ord46903.pdf>

fair manner. A procuring entity may choose to procure a subject matter of procurement by the electronic reverse auction method, if:

- i). Items for Reverse Auction may be selected carefully. Items of strategic, critical and vital nature, items in short supply in market and where there are only a few suppliers are not good candidates for reverse auction. Items in the nature of commodities, Commercially-off-the-shelf items, items having large number of suppliers and high value procurements may be more amenable to reverse auction;
- ii). It is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;
- iii). There is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured;
- iv). The criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms;
- v). In cases where pre-qualification of bidders is considered necessary, reverse auction may be carried out after a separate PQB (electronic or otherwise) among the successful bidders only.

Subject to more detailed guidelines in the category-specific manual or other guidelines, the procedure for electronic reverse auction shall include the following, namely:

- i). The procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to e-procurement; and
- ii). The invitation shall, in addition to the information as specified in e-procurement, include details relating to:
  - Access to and registration for the auction;
  - Opening and closing of the auction;
  - Norms for conduct of the auction; and
  - Any other information as may be relevant to the method of procurement.

#### **4.18 One Stop Government e-Marketplace (GeM) by DGS&D**

4.18.1 An online marketplace (or e-commerce marketplace) is a type of e-commerce site where product or services are offered by a number of sellers and all the buyers can select the product/services offered by any one of the seller, based on his own criteria. In an online marketplace,

Purchaser's transactions are processed by the marketplace operator and then product/ services are delivered and fulfilled directly by the participating retailers. Other capabilities might include auctioning (forward or reverse), catalogues, ordering, posting of requirements by Purchasers, Payment gateways etc.. In general, because online marketplaces aggregate products from a wide array of providers, selection is usually wider, availability is higher, and prices are more competitive than in vendor-specific online retail stores.

4.18.2 DGS&D has developed an online Government e-Market Place for common use goods and services. The procurement process on GeM is end to end from placement of supply order to payment to suppliers. This is to ensure better transparency and higher efficiency. All the process will be electronic and online.

**4.18.3 Products and services are listed on GeM by various suppliers as on other e-Commerce portals:** The registration of suppliers on GeM is online and automatic based on PAN, MCA-21, Aadhar authentication etc. The suppliers will offer their products on GeM and the Government buyer will be able to view all the products as well as compare them. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities.

**4.18.4 Demand Aggregation:** The best prices to a user can be available if same requirement demands of various organizations are aggregated. This acts as an incentive for the supplier to quote their best price. For the same products, the demand of various Govt. Departments can be clubbed together and reverse auction done on the basis of aggregated demand which will provide the best prices to the Govt. Department.

**4.18.5 Authority of procurement through GeM:** Procurement through GeM has been authorised as per GFR Rule 141-A. GFR 141-A is reproduced below:-

***"Government e-Market Place (GeM): DGS&D will host an online Government e-Marketplace (GeM) for common use goods and services. The GeM would be dynamic, self-sustaining and user friendly. DGS&D will ensure adequate publicity including periodic advertisements in newspapers of the GeM and the items to be procured through GeM for the prospective suppliers. The procuring authorities will satisfy themselves that the price of the selected offer is reasonable. GeM may be utilized by Government buyers (at their option) for direct online purchase as under:-***

- (a) *Upto Rs. 50,000/- through any of the available suppliers on the GeM, meeting the requisite quality, specifications and delivery period.*
- (b) *Above Rs. 50,000/- through the supplier having lowest prices amongst the available suppliers on the GeM, meeting the requisites quality, specification and delivery period. GeM will also*

*provide tools for online bidding and online reverse auction which can be used by the Purchaser.*

*The above monetary ceiling is applicable only for purchases made through GeM. For all other purchases, GFR Rule 145, 146, 150 and 151 will apply.”*

It may be noted that unlike Rate Contracts, the responsibility of reasonableness of rate for procurements from GeM portal does not lie with DGS&D. It is the responsibility of the Procuring Entity to do due diligence for ensuring reasonableness of rates.

**4.18.6 Pilot Phase of GeM:** DGS&D has developed a pilot phase of GeM and products like Computers, Laptops, Tablets, All-in-One Computers, UPS, Digital Copiers, Multi-functional Machines, Packaged Drinking Water, Office Stationary Products etc. and service of transport hiring and leasing have been made available for procurement.

**4.18.7 Full Fledge Version of GeM:** DGS&D will float an RFP for selection of the Managed Service Provider (MSP). The MSP will develop the full-fledged GeM which will be launched by DGS&D in 2017-18.

**4.18.8 GeM Portal:** <https://gem.gov.in>. Detailed instructions for user organization registration, supplier registration, listing of products, terms and conditions, online bidding, reverse auction, demand aggregation, call centre, etc. are available on this portal.

**4.18.9 Payment Procedure in GeM:** The payment procedure in GeM is governed by O.M. No. F.26/4/2016-PPD dated 26th May, 2016 issued by D/o. Expenditure, M/o. Finance, New Delhi. The salient feature of this O.M. is that it is obligatory to make payments without any delay for purchases made on GeM. The consignee is required to issue an online digitally signed consignee receipt and acceptance certificate after receipt of goods within ten days. Thereafter, the payments are to be released maximum within ten days. The timelines after Consignee Receipt and Acceptance Certificate (CRAC) issued online and digitally signed by consignee will be two (2) working days for Buyer, one (1) working day for concerned DDO and two (2) working days for concerned PAO for triggering payment through PFMS/Government Financial System / Banks for crediting to the supplier's account. Any matter needing a resolution will be escalated to the next higher level in each agency (Buyer, DDO and PAO) where the matter should be resolved within 24 hours in the entire process, payments should not exceed ten days including holidays.

4.18.10 DGS&D should strive to bring more and more products and services on GeM to facilitate Govt. Buyers.

## ***Chapter 5: Preparing bid documents, publication, receipt and opening of bids***

### **5.1 Preparation of Bid Documents**

5.1.1 The text of the bid document should be self-contained and comprehensive without any ambiguity. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. A carefully prepared tender document avoids delays and complaints. Hence, it is worth spending time and effort on this even in cases of urgency.

Bid documents should be based on SBDs relevant for the value range and the category of procurement. SBD for e-procurement would be slightly different from the traditional SBD. To ensure uniformity, the standard provisions in most sections of the SBD/SRfPD are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Special Instructions to Bidders or special conditions of contract (these variable sections may have different nomenclatures in some organisations).

In case of a limited tender, instead of a full set of SBD, only a machine numbered tender form (refer Annexure 5) is used as the tender document, after filling up the name of the vendor and details of requirements. It has the “terms and conditions of tender” printed on the obverse side. In any case, all registered vendors, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of “general conditions of contract” as part of the registration application, which are applicable to such procurements, in addition to “terms and conditions of tender” on the obverse of tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.

While SBDs would be complete in themselves and may be slightly different for various categories of procurements, these must necessarily address the following essential aspects:

- a) Description of the subject matter of procurement, its specifications including the nature, quantity, time and place or places of delivery;
- b) Limitation or preference for participation by bidders in terms of the government policies;

- c) The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the supplier's eligibility to receive such a government contract. The qualification criteria should take care of the supplier's past performance, experience, technical competence and production capacity of the subject goods, financial strength to handle the contract successfully, and so on);
- d) The procedure as well as date, time and place for obtaining, submitting and opening of the bids;
- e) Terms of delivery/completion;
- f) Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid;
- g) Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/highest as the case may be) bidder should be clearly indicated in the bidding documents;
- h) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document; and
- i) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.

### **5.1.2 *Contents of Tender Documents***

The main sections of the SBD are:

- a) Notice Inviting Tender (NIT);
- b) Instructions to Bidders (ITB);
- c) Additional Instructions to Bidders (AITB) (instead of modifying ITB, it is better to have information specific to a procurement as a separate section);
- d) Eligibility and qualification criteria;
- e) Schedule of requirements
- f) Technical specifications (including Drawings) and Quality Assurance (Inspections and Tests);
- g) GCC;
- h) Special Conditions of Contract (SCC) (instead of modifying GCC every time, it is better to have it as a separate section); and

- i) Standard formats, including Bid Cover letter, price schedules, bank guarantees and contract format.

A reading of the sections of the tender document will make the purpose and instructions clear.

However, some broad guidelines for preparing bid documents are provided in the subsequent paragraphs.

### **5.1.3 Notice Inviting Tender**

The model NIT format in SBD should be used for publishing the tender notice. To ensure competition, attention of all likely tenderers, for example, registered suppliers, past suppliers and other known potential suppliers, should be invited to the NIT through email/SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically.

The Notice Inviting Tender (NIT) is crucial for attracting wide competition in the tender. The model NIT format in SBD should be used for publishing the tender notice. The NIT should be brief but must contain sufficient detail for a prospective bidder to decide whether to participate in the tender or not and, if he decides to participate, how to go about it. To ensure competition, attention of all likely tenderers, for example, registered vendors, past suppliers and other known potential suppliers, should be invited to the NIT through email/ SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically. NIT should be published as per the current policy of Procuring Entity in this regard. Advertisements in newspapers may be brief and direct those interested to the Procuring Entity website.

In case of procurement through a limited tender, the NIT may be uploaded on Procuring Entity's website with a note saying:

*“This notice is being published for information only and is not an open invitation to quote in this limited tender. Participation in this tender is by invitation only and is limited to the selected Procuring Entity’s registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may apply for registration with Procuring Entity as per procedure.”*

Newspapers cuttings in each case and printouts of the tenders published on the website should be collected and kept on record as a proof of publicity. The complete details of the dates, on which advertisements actually appeared in the newspapers and on the website, should be indicated while sending cases to higher authorities.

### **5.1.4 Information to Bidders and AITB**

ITB contain all relevant information as well as guidance to the prospective tenderers regarding all aspects of obtaining tender documents, and preparing and submitting a responsive bid. It also mentions the process of establishing the eligibility of the tenderer as well as evaluation and comparison of tenders and award of contract. ITB should not contain information on processes after the announcement of the award which should be covered in GCC, for example, the arbitration clause, resolution of disputes, and so on. Instead of modifying ITB every time, any changes warranted by special circumstances may be indicated with the prior approval of CA on a separate AITB and ITB may be included unchanged in every tender document. It should also be indicated therein that the provisions in the AITB will supersede the corresponding provisions in the ITB.

Important clauses of ITB/ AITB which may require attention and action are:

**a) Purchase Preference Policies**

If the purchaser intends to give a purchase preference in line with current government policies, this fact must be declared in the ITB/AITB and in NIT as well.

**b) Clarification of Tender Documents**

A prospective bidder requiring clarification on the tender documents may notify to Procuring Entity in writing, well before the due date of submission of bids, and a response will be sent in writing to the clarifications sought prior to the date of opening of the tenders. Copies of the query and clarification shall be sent to all prospective bidders who have received the tender documents.

**c) Amendment of Tender Documents**

At any time prior to the date of submission of bids, the purchaser may, whether at his own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. The corrigendum shall be notified in writing by registered post/speed post/courier/email to all known prospective bidders. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents uploaded on the website. When the amendment/modification changes the requirement significantly and /or when there is not much time left for the tenderers to respond to such amendments, and prepare a revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding timeframes for receipt of the tender, tender validity period, and so on, and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also

need fresh publication adopting the same procedure as for publication of the original tender enquiry.

**d) Bid Validity**

A bid shall remain valid for the period mentioned in the ITB/ AITB (normally 75 days for OTE and 90 days for GTE). In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

**e) Sealing and Marking of Tenders**

The tender document is to indicate the total number of tender sets (for example, in duplicate or in triplicate, and so on) required to be submitted. The tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as "original", "duplicate," and so on, and also printing the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before (due date and time of tender opening) is also to be printed on these envelopes. The inner envelopes are then to be put inside a bigger outer envelope, which will also be duly sealed marked, and so on, as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening, and so on. All the above instructions are to be suitably incorporated in the tender documents.

**f) Withdrawal, Substitution and Modification of Tenders**

The tenderer, after submitting the tender, is permitted to withdraw, substitute or modify the tenders in writing without forfeiture of Bid Security/ EMD, provided these are received duly sealed and marked like the original tender, up to the date and time of receipt of the tender. Any such request received after the prescribed date and time of receipt of tenders will not be considered. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity. Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

**g) Eligibility/Evaluation/Qualification Criteria**

If it is intended to use eligibility/evaluation/qualification criteria to evaluate a tender and determine whether a tenderer has the required qualifications, this point may be clearly specified in NIT, ITB/AITB or as a separate section of the tender document. The bidder has to ensure that

he provides convincing proof of having fulfilled these criteria. Any *criteria not specified in the tender cannot be used for evaluation or qualification.*

**h) OEM/Authorised Dealer/Agents of Supplier**

Except in case of Commercially-Off-the-Shelf (COTS) items, when a firm sends quotation for an item manufactured by some different company, the firm is also required to attach, in its quotation, the manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product as per formats given in SBD. This is necessary to ensure quotation from a responsible party offering genuine product, also backed by a warranty obligation from the concerned manufacturer. In the tender, either the manufacturer or its authorised dealer can be considered as valid bidders.

In case of large contracts, especially capital equipment, the manufacturer's authorisation must be insisted upon on a tender specific basis, not general authorisation/dealership, by so declaring in the bid documents clearly.

In cases where the manufacturer has submitted the bid, the bids of its authorised dealer will not be considered and EMD will be returned.

And in case of violations, both infringing bids will be rejected.

**i) Conflict of Interest among Bidders/ Agents**

A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- i) they have controlling partner (s) in common; or
- ii) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or
- iii) they have the same legal representative/agent for purposes of this bid; or
- iv) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or
- v) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid.

- vi) In cases of agents quoting<sup>23</sup> in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:
  - a) The principal manufacturer directly or through one Indian agent on his behalf; and
  - b) Indian/foreign agent on behalf of only one principal.
- vii) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid;
- viii) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/ management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business.

**j) Schedule of Requirements**

This section comprises the list of goods and delivery schedule. If there is no separate TS, then TS, quality assurance and inspections may also be included here. If the tender contains a number of schedules of requirements, it must be clarified, whether evaluation of eligibility/qualifications/financial bids would be on a schedule by schedule basis or on the basis of a total of all schedules put together.

**k) Quotation Received from Dealers/Agents for Items not Manufactured by Them**

When a firm sends a quotation for an item manufactured by a different company, the firm is also required to attach in its quotation that manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product (in addition to the tenderers' confirmation to the required warranty). If the firm is an authorised agent/dealer of that manufacturer, certified documentary evidence to this effect is to be attached along with the quotation. This is necessary to ensure a quotation from a responsible party offering the genuine product, also backed by a warranty obligation from the concerned manufacturer.

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<sup>23</sup> CVC (CTE) No.12-02-6-CTE/SPI (1)-2, dated January 13, 2012 refers to this.

#### I) Special Conditions in GTE Procurements

- a) **Currency of Bidding:** In GTE tenders, the Foreign Bidders are allowed to quote price (and get paid) in RBI's notified basket of foreign currencies - US Dollar or Euro or Pound Sterling or Yen etc., in addition to the Indian Rupees - except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. Indian Bidders are to quote in INR only.
- b) **Delivery Terms:** The delivery terms are to be expressed in terms of Incoterms. As per the revised policy<sup>24</sup> of the Government, all Public Procurement import contracts involving (Ocean freight of dry or liquid bulk cargoes) are to be finalized only on FOB (Free on Board)/FAS (Free Alongside Ship) basis and in case of any departure there-from, prior permission and No Objection Certificate will have to be obtained from the Chartering Wing of Ministry of Shipping on a case-to-case basis with the approval of the concerned administrative Ministry/Department. However imports involving ocean freight of general liner: cargoes - project cargoes, heavy lift, container, break bulk cargoes etc. can now be made on FOB (Free on Board)/FAS (Free Alongside Ship) or C&F (Cost & Freight)/CIF (Cost, Insurance & Freight) basis. All importing Government Departments/PSUs are now allowed to make their own shipping arrangements without needing to route their requirements through Chartering Wing of Ministry of Shipping. As per the extant directive of the government, airlifting of imported goods from abroad will be done only through the national carrier, that is, Air India, wherever applicable. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed; and
- c) **Insurance:** Wherever necessary, the goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on an "all risks" basis including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the purchaser for receiving the goods at the destination. Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rs. 5 crore.

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<sup>24</sup> <http://shipping.nic.in/showfile.php?id=2098>

Procuring Entities who are entering into large number of imports contracts, may enter into annual Insurance arrangements for all imports during the year with Insurance Companies, instead of insurance for each individual imports separately on the basis of “Open Cover (all Risk)”. Where delivery of imported goods is required by the purchaser on Cost Insurance and Freight/Carriage and Insurance Paid (CIF/CIP) basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on Free On Board/ Free Alongside Ship (FOB/FAS) basis, marine/air insurance shall be the responsibility of the purchaser

### ***5.1.5 General and Special Conditions of the Contract***

The GCC to be used for contracting for procurement are provided in Procuring Entity’s SBD. GCC covers all information on aspects after the announcement of the tender award till the closure of the contract and dispute resolution. It should not cover any aspect up to announcement of award. Instead of modifying the GCC every time, any changes warranted by special circumstances may be indicated in a separate SCC with the prior approval of the CA and GCC may be included unchanged in every tender document. It is also to be indicated therein that the provisions in the SCC will supersede the corresponding provisions in the GCC.

### ***5.1.6 Submission Formats***

This section contains the relevant forms for tender submission: various declarations by tenderer, formats for the bank guarantee, price schedule forms, exception and deviation forms, contract forms and manufacture’s authorisation form, and so on.

## **5.2 Receipt and Custody of Tenders**

### ***5.2.1 Cost and Sale of Tender Documents***

Tender documents should preferably be sold up to one day prior to date of opening of tenders and this should be clearly indicated in the documents. The organisation should also post the complete tender document in the website and permit prospective tenderers to make use of the document downloaded from the website.

In the era of downloadable bid-documents, charging a cost for Bid Documents is no longer warranted. Whatever cost is incurred in preparation of Bid documents, including drawings and specifications may be absorbed as administrative expenses by the procuring entity. ~~The tender document fee should be as low as possible considering the cost/effort of preparing documents. The~~

~~cost of the tender document is to be submitted to the authority nominated therein by the prospective tenderer in the form of a demand draft /banker's cheque/pay order. This fee is required to be paid even in case of downloadable documents—where proof of this payment must be uploaded along with the bid. Firms that are eligible for exemption from the tender document fee such as Procuring Entity or NSIC registered units (for relevant items and monetary limit) have to submit/upload scanned copy of documents in support of this exemption.~~

### **5.2.2 Pre-bid Conference**

In case of turnkey contract (s) and facilities of a special nature for procurement of sophisticated and costly equipment, large works and complex consultancy assignments, a suitable provision is to be kept in the bidding documents for one or more pre-bid conference for clarifying issues/clearing doubts, if any, about the specifications and other allied technical/commercial details of the plant, equipment and machinery projected in the bidding document and for ensuring that the technical requirements provide a level playing field. The date, time and place of the pre-bid conference should be indicated in the tender enquiry document. Bidders should be asked to submit written queries in advance of the conference. After the conference, the techno-commercial requirements may be revised if considered necessary by way of issue of a formal corrigendum (mere minutes of the meeting of pre-bid conference would not suffice) and shared with all the bidders who purchase or have purchased the bid documents.

### **5.2.3 Extension of Tender Opening Date**

Sometimes, situations may arise necessitating modification of the tender documents already issued (LTE case) or already put on sale (OTE case). Also, after receiving the documents, a tenderer may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it is necessary to amend/modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment / modification should be simultaneously sent to all the selected suppliers by registered/speed post/courier/e-mail in case of LTE. In case of OTE, the copies of such amendment / modification are to be simultaneously despatched, free of cost, by registered/speed post/courier/e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents put in the web site.

When the amendment/modification changes the requirement significantly and /or when there is not much time left for the tenderers to respond to such amendments, and prepare revised tender, the

time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding time-frames for receipt of tender, tender validity period etc and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

#### **5.2.4 Sealing, and Marking of Bids by Bidders**

The tender document is to indicate the total number of tender sets (e.g., in duplicate or in triplicate etc) required to be submitted. In case of two envelop bidding system, the techno-commercial bid and financial bid should be sealed by the tenderer in separate covers duly marking these as 'Techno-commercial Bid' and 'Financial Bid' and marked these with the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before..... (due date & time of tender opening) are also to be put on these envelopes and these sealed covers are to be put in a bigger cover which should also be sealed and duly super scribed in a similar manner. In case bids are asked in a number of copies, the tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as "original", "duplicate" and so on and also marking these as mentioned above. The inner envelopes are then to be put in a bigger outer envelope, which will also be duly sealed marked etc. as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening etc. These details regarding the submission of bids should also form a part of the ITB and AITB in the tender documents; all the above instructions are to be suitably incorporated in the tender documents.

#### **5.2.5 Submission, Receipt and Custody of Tenders**

In e-procurement, all tenders uploaded by tenderers are received, safeguarded and opened online on the portal. In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

- i). The procuring entity shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders. Tender boxes should be separate for each day of the week of tender opening and should be sealed by the Bid Opening Committee (BOC) of the day. The tender box shall have two locks. Key of one lock will be with the head of the office and the other key with the official nominated by him;

- ii). Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected.; and
- iii). For bulky/oversized bids which cannot be dropped into tender boxes, the officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also sign on the cover, duly indicating the date and time of receipt of the tender(s). Names and designations of at least two such authorised officers should be mentioned in the bid documents

#### **5.2.6 Withdraw/ Amendments / Modifications to Bids by Bidders**

The tenderer, after submitting its tender, is permitted to withdraw/ alter/modify its tender so long such withdrawal/ alterations/ modifications are received duly sealed and marked like original tender, upto the date & time of receipt of tender. Any withdrawal/ amendment/modification received after the prescribed date & time of receipt of tenders are not to be considered. Para 7.2 (Forfeiture of EMD) of Chapter 7 also refers in this regard.

### **5.3 Procedures to be followed during Bid Opening**

In e-procurement, bids are opened online as detailed in Appendix 3. In offline tenders, the BOC shall comprise one officer each from the procuring entity and Associated/ integrated Finance.

- i). The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE/ SLTE are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the bidding document. All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report are given at Annexure 10;
- ii). At a prescheduled date and time, the BOC of the day should get the particular tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Committee (TC) concerned, if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers)

should be sorted, and a count for each tender should be announced and recorded, particularly noting any modifying/altering/withdrawal of bids. BOC should ensure and demonstrate that bid envelopes are duly sealed and untampered. Late bids should be separately counted but kept aside and not opened. In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered;

- iii). After opening, every tender shall be numbered serially (say 3/14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the BOC. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the BOC. The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the BOC;
- iv). Erasure/cutting/overwriting/use of whitener/columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/amount is written only in figures, the BOC should write them in words. All rebates/discounts should be similarly circled, numbered and signed. In the absence of any alteration/overwriting/whitener/ blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”
- v). The BOC is to announce the salient features of the tenders such as description and specification of the goods, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening. It should be understood that BOC has no authority to reject any tender at the tender opening stage;
- vi). Proper sealing and codification need to be done on samples as well for samples which accompany the bid. These should be kept for reference under lock and key. Details should be recorded in the sample register maintained in the opening section. Documents related to money should be noted in the bid opening report/register and handed over to the Finance Section for safe custody and monitoring; and

vii). A bid opening report containing the names of the tenderers (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated purchase officer and an acknowledgement obtained for him.

<b>5.4 Bidding Process- Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
<b>Exceptions to an open bidding process</b> are abused, leading to single source processes.	<b>Rigorously follow the conditions</b> under which open tendering can be dispensed with .
<b>When short lists are used</b> , the process of preparation of short lists may be non-transparent and all eligible firms may not be included and some ineligible firms may get included.	<b>Registration of bidders/contractors:</b> All major procuring departments must keep a list of registered bidders for use in restricted bidding. Publicise even restricted bids on your website. Bidders for LTE/ SLTE may be transparently selected with the approval of CA.
<b>Pre-qualification criteria:</b> PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements and neither be very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. Also, there should be fair competition.	<b>Lay down</b> criteria when two stage bidding is warranted. Also lay down model PQC criteria for different types of procurements.
<b>Invitation to tender</b> (an open bid) is not well publicised or gives insufficient time, thereby restricting the number of bidders that participate.	<b>Publicity and adequate time for bid submission</b> must be ensured. Require a higher level approval for short bid submission period.
<b>Evaluation criteria</b> are not set from the beginning or are not objective or not clearly stated in the bid documents, thereby making them prone to being abused.	<b>Objective, relevant and clearly</b> stated evaluation criteria must be specified in the bid document.

## ***Chapter 6: Forms of Securities, Payment Terms and Price Variations***

### **6.1 Forms of Security**

#### ***6.1.1 Bid Security***

To safeguard against a bidder's withdrawing or altering its/his bid during the bid validity period in the case of OTE and GTE tenders, bid security (also known as Earnest Money Deposit (EMD)) is to be obtained from the bidders along with their bids except from bidders who are exempted from paying bid security. The amount of bid security should generally be between 2 to 5 per cent of the estimated value of the goods to be procured. The exact amount of bid security, rounded off to the nearest thousands of Rupees, as determined by the Procuring Entity, is to be indicated in the bidding documents. The bid security may be obtained in the form of an account payee demand draft, fixed deposit receipt, or banker's cheque. However, in case the bid security is more than a threshold (Rs. 5 lakh) and in case of foreign bidders in GTE tenders it may also be allowed in the form of a bank guarantee (in equivalent Foreign Exchange amount) issued/ confirmed from any of the commercial bank in India in an acceptable form, and so on, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of 45 days beyond the final bid validity period.

Submission of the bid security may be waived with the Competent Authority's (CA's) approval in the case of indigenisation/development tenders, limited tenders and procurement directly from the manufacturer or authorised agents.

Tenderers that are currently registered will also continue to remain registered during the tender validity period with the Procuring Entity or DGS&D, NSIC or MSEs (please refer to para 1.5 of Chapter 1) are exempt from payment of EMD. In case the tenderer falls in these categories, the bidder should furnish a certified copy of its valid registration details (with the National Small Industries Corporation (NSIC), as the case may be). This exemption is valid for the trade group and monetary value of registration only.

A bidder's bid security will be forfeited if the bidder withdraws or amends its/his tender or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required performance security within the specified period.

Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract. Bid security should be refunded to the successful bidder on receipt of a performance security.

### ***6.1.2 Performance Security***

To ensure due performance of the contract, performance security (or Performance Bank Guarantee (PBG) or Security Deposit (SD)) is to be obtained from the successful bidder awarded the contract. Performance security should be for an amount of five to ten per cent of the value of the contract. Performance security may be furnished in the form of an account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India in an acceptable form, and so on, safeguarding the purchaser's interest in all respects. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities<sup>25</sup>. In procurement of Goods, the concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable. Submission of Performance Security is not necessary for a contract value upto Rs.1 lakh.

Performance Security is to be furnished by a specified date (generally 14 days after notification of the award) and it should remain valid for a period of 60 days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.

The performance security will be forfeited and credited to the procuring entity's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60 days of completion of all such obligations including the warrantee under the contract.

### ***6.1.3 Warrante Bank Guarantee***

In case of works and capital equipment, there is usually a defect liability/ warrantee clause against defects arising from design, material, workmanship or any omission on part of the vendor/ contractor during a specified period of months from the date of commissioning or from the date of dispatch in case of goods – whichever is earlier. In such cases, the performance guarantee is to be

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<sup>25</sup> A set of rules developed by the International Chamber of Commerce first adopted in 1992. The latest version URDG 758 provides a framework for harmonising international trading practices and establishes agreed-upon rules for independent guarantees and counter-guarantees among trading partners for securing payment and performance in worldwide commercial contracts.

valid upto 60 days beyond the warrantee period. It is normally permissible in such a situation to allow Performance guarantee to be valid upto 60 days beyond delivery/ commissioning period and the contractor may be allowed to submit a fresh Warrantee Bank Guarantee of 10 per cent of the value of the goods in the currency of the contract valid upto 60 days beyond the Warrantee period. In such cases, the performance guarantee is to be returned only after satisfactory delivery/ commissioning and receipt of such a warrantee bank guarantee. In procurement of other than Capital Equipment Goods (and in case of low value Capital Goods – say upto Rs 1 Lakh), Warrantee Clause is not called for.

#### ***6.1.4 Verification of Bank Guarantees***

Bank guarantees submitted by the tenderers/suppliers as EMD/ performance securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted from legal/ finance authority if it is in the specified format. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/ performance security/advance payments and for various other purposes are as follows:

- (a) BG shall be as per the prescribed formats
- (b) The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);
- (c) The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs);
- (d) The confirmation from the issuing branch of the bank is obtained in writing through registered post/speed post/courier. The bank should be advised to confirm the issuance of the BGs specifically quoting the letter of Procurement Entity on the printed official letterhead of the bank indicating address and other details (including telephone nos.) of the bank and the name, designation and code number of the officer(s) confirming the issuance of the BG;
- (e) Pending receipt of confirmation as above, confirmation can also be obtained with the help of responsible officer at the field office, which is close to the issuing branch of the bank, who should personally obtain the confirmation from issuing branch of the bank and forward the confirmation report to the concerned procurement entity.

### ***6.1.5 Safe Custody and Monitoring of EMDs, Performance Securities and Other Instruments***

A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented by each ministry/department. The ministries/departments shall also make institutional arrangements for taking all necessary actions on time for extension or encashment or refund of EMDs and performance securities, as the case may be. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three months, along with a review of the progress of the corresponding contracts. Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period. Bank Guarantee should never be handed over to the supplier for propose of extension of validity. Such a system of monitoring of securities and other instruments may be considered to be computerised with automatic alerts about lapse of validity etc.

### ***6.1.6 Bank Guarantees and Letters of Credit through Electronic Secure Financial Messaging Systems of the Banks (SFMS)***

Structured Financial Messaging System (SFMS) is a secure electronic domestic financial messaging system that is the basic platform for secure communication within the bank and between banks. SFMS is used for applications like Electronic Funds Transfer (EFT), Real Time Gross Settlement System (RTGS), Delivery Versus Payments (DVP), Centralized Funds Management System (CFMS) etc. As a pilot project it is also being used for Trade Finance including Letter of Credit and Bank Guarantees by a number of Banks. Use of SFMS to generate electronic LCs and BGs can prevent cases of frauds in case of L.C discounting and BGs which is a great cause of concern in public procurement. This would also obviate the cumbersome process of verification of BGs from the Banks. However unless large number of Banks start using SFMS for Trade Finance, it cannot become a default commercial mode. Department of Financial Services, Ministry of Finance<sup>26</sup> has ordained all Public Sector Banks to mandatorily switch over to SFMS system for issue of LCs and BGs. As and when this system becomes functional in near future following methodology is to be followed for LCs and Electronic BGs through electronic means:

1. Issuing Banks will continue to receive applications for Bank Guarantees (BG) as usual. However, along with the application (from the Bidder), the banks will now obtain .details of

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<sup>26</sup> vide their OM - F.No.7/112/2011-BOA dated 1st July 2012

the Bank of the Beneficiary (Procuring Entity) for the Bank Guarantee. These details should be indicated in the Bid Documents.

2. Once the Issuing Bank processes the BG, the same shall be issued on the SFMS platform. The secure message will be sent to the Beneficiary (Procuring Entity) 's Bank through SFMS and a hard copy of the Bank Guarantee clearly indicating that it is a 'COPY ONLY' will be handed over to the Applicant (Bidder) for their use e.g. for attaching it with any Bid Documents.
3. On receiving the secure message on SFMS for the BG, the Beneficiary (Procuring Entity)'s bank will print the Bank Guarantee on Stamp Paper of required value or pay the required Stamp Duty by other means and deliver it to the Procuring Entity. Same process would be followed for extending the validity of the BGs.
4. There would be no need to verify such Bank Guarantees from the issuing Bank.
5. Encashment process would be reverse of the process.
6. In the Process of LC, the applicant would be the Procuring Entity and the beneficiary would be the Contractor.

## 6.2 Payment Clause

The elements of price included in the quotation of a tenderer depend on the nature of the goods to be supplied and the allied services to be performed, location of the supplier, location of the user, terms of delivery, extant rules and regulations about taxes, duties, and so on, of the seller's country and the buyer's country.

In case of indigenous goods, the main elements of price may include raw material, production cost, overhead, packing and forwarding charges, margin of profit, transit insurance, excise duty and other taxes and duties as applicable. In case of imported goods, in addition to similar elements of price as above (other than excise duty and taxes), there may be elements of custom duty, import duty, landing and clearing charges and commission to Indian agents. Further, depending on the nature of the goods (whether domestic or imported), there may be cost elements towards installation and commissioning, operator's training, and so on.

It is, therefore, necessary that, to enable the tenderers to frame their quotations properly in a meaningful manner, the tender documents should clearly specify the desired terms of delivery and also the duties and responsibilities to be performed by the supplier in addition to supply of goods.

- a) **Elements of Price:** Where the price has several components such as the price of the goods, cost of installation and commission, operators' training, and so on, bidders should be asked to furnish a cost break-up indicating the applicable prices and taxes for each of such

components along with the overall price. The payment schedule and terms will be linked to this cost break-up; and

- b) **Currency:** The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic tenderers are to quote and accept their payment in Indian currency; Indian agents of foreign suppliers are to receive their agency commission in Indian currency; costs of imported goods, which are directly imported against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the allied work and services, which are to be undertaken in India (like installation and commissioning of equipment) are to be quoted and paid in Indian currency.
- c) **Payment to Suppliers:** In a supply contract, delivery of goods is the essence of the contract for the purchaser. Similarly, receiving timely payment for the supplies is the essence of the contract for the seller. A healthy buyer-supplier relationship is based on the twin foundation of timely and quality supply, on the one hand, and prompt and full payment to the supplier, on the other. It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions:
  - 1) As far as possible, the payment terms and time schedule should be given in the contract and must be adhered to. Any foreseeable payment delays should be communicated to the suppliers in advance;
  - 2) Prompt and timely provision of statutory certificates to the seller for taxes deducted at source, are as much a part of payment as the amount actually released. A detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted must be issued to the supplier along with payment. As soon as possible, but not later than the date of submission of Tax returns, the procuring entity must provide the statutory certificates for the taxes deducted to the Supplier, so that he is able to claim set-offs and refunds from the concerned authorities.
  - 3) Release of payment and settlement of the final bill should be processed through the Associated/ integrated Finance as per the terms and conditions of the contract;
  - 4) No payments to contractors by way of compensation or otherwise outside the strict terms of the contract or in excess of the contract rates should be allowed;
- d) Before the payment is made, the invoice should be cross-checked with the actual receipt of material/assets/services to ensure that the payment matches the actual performance;

- e) While claiming the payment, the contractor must certify on the bill that the payment being claimed is strictly within terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment;

### **6.3 Terms of Payment for Domestic Goods**

Where the terms of delivery are FOR Dispatching Station, the payment terms, depending on the value and nature of the goods, mode of transportation, and so on, maybe 60 to 90 per cent on proof of dispatch and other related documents and balance on receipt at site and acceptance by the consignee.

Where the terms of delivery is CIP destination/delivery at site/FOR destination, the usual payment term is 100 per cent on receipt and acceptance of goods by the consignee and on production of all required documents by the supplier.

Where goods to be supplied also need installation and commissioning by the supplier, the payment terms are generally:

- a) For a contract with terms of delivery as FOR dispatching station -- 60 per cent on proof of dispatch along with other specified documents, 30 per cent on receipt of the goods at site by the consignee and balance 10 per cent on successful installation and commissioning and acceptance by the consignee; and
- b) For a contract with terms of delivery as CIP destination/delivery at site/FOR destination -- 90 per cent on receipt and acceptance of goods by the consignee at destination and on production of all required documents by the supplier and balance 10 per cent on successful installation and commissioning and acceptance by the consignee.

NB: Generally (especially for goods requiring installation and commissioning at site by the supplier), the desirable terms of delivery are CIP destination or delivery at site, so that the supplier remains responsible for safe arrival of the ordered goods at the site. Therefore, unless otherwise decided ex-works or FOR dispatching station terms should be avoided.

#### ***6.3.1 Modes of Payment for Domestic Goods***

Payments to domestic suppliers are usually made by cheque/demand draft drawn on a government treasury or branch of RBI or State Bank of India transacting government business. Such payment can

also be made to the supplier's bank, if the bills are endorsed in favour of the bank with a pre-receipt embossed on the bills with the words, "received payment" and both the endorsement and pre-receipt are authenticated by the supplier. In addition, an irrevocable power of attorney is to be granted by the supplier in favour of the bank. In such of those cases where there has been global tendering, in order to have uniform payment clauses, if domestic suppliers, especially against high value contracts for sophisticated equipment/machinery, desire payment through LC, depending on the merits of the case, this may be agreed to.

### **6.3.2 Documents for Payment for Domestic Goods**

- a) Supplier's Invoice indicating, *inter alia* description and specification of the goods, quantity, unit price, total value;
- b) Packing list;
- c) Certificate of country of origin;
- d) Insurance certificate;
- e) Railway receipt/consignment note;
- f) Manufacturer's guarantee certificate and in-house inspection certificate;
- g) Inspection certificate issued by purchaser's inspector; and
- h) Any other document(s) as and if required in terms of the contract.

## **6.4 Terms of Payment for Imported Goods**

6.4.1 Usual payment terms, unless otherwise directed by CA, are indicated below:

- a) Cases where installation, erection and commissioning (if applicable) are not the responsibility of the supplier -- 100 per cent net FOB/FAS price is to be paid against invoice, shipping documents, inspection certificate (where applicable), manufacturers' test certificate, and so on;
- b) Cases where installation, erection and commissioning are the responsibility of the supplier -- 80 - 90 per cent net FOB/FAS price will be paid against the invoice, inspection certificate (where applicable), shipping documents, and so on, and balance within 21-30 days of successful installation and commissioning at the consignee's premises and acceptance by the consignee; and

- c) Payment of agency commission against FOB/FAS contract – the entire 100 per cent agency commission is generally paid after all other payments have been made to the supplier in terms of the contract.

#### ***6.4.2 Modes of Payment for Imported Goods***

It should be ensured that the imports into India are in conformity with the export-import policy in force: FEMA; FEMA (Current Account Transactions) Rules, 2000 framed by Procuring Entity; and directions issued by RBI under FEMA from time to time.

For imported goods, payment usually happens through the LC opened by the State Bank of India or any other scheduled/authorised bank as decided by the procuring entity. The amount of LC should be equal to the total payable amount, and be released as per the clauses mentioned above.

Provisions of Uniform Customs and Practices for Documentary Credits<sup>27</sup> should be adhered to while opening the LC for import into India. If the LC is not opened, payment can also be made to the seller through a direct bank transfer for which the buyer has to ensure that payment is released only after the receipt of prescribed documents.

#### ***6.4.3 Documents for Payment for Imported Goods***

The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.

Important documents, which the supplier is to furnish while claiming payment, are:

- 1) Supplier's original invoice giving full details of the goods including quantity, value, and so on;
- 2) Packing list;
- 3) Certificate of country of origin of the goods to be given by the seller or a recognised chamber of commerce or another agency designated by the local government for this purpose;
- 4) Certificate of pre-dispatch inspection by the purchaser's representative;
- 5) Manufacturer's test certificate and guarantee;
- 6) Certificate of insurance;

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<sup>27</sup> The **Uniform Customs and Practice for Documentary Credits** is a set of rules regarding techniques and methods for handling LCs in international trade finance which has been standardised by the International Chamber of Commerce, the current version being the UCP600.

7) Bill of lading/airway bill/rail receipt or any other dispatch document, issued by a government agency (like the Department of Posts) or an agency duly authorised by the concerned ministry/department, indicating:

- a) Name of the vessel/carrier;
- b) Bill of lading/airway bill;
- c) Port of loading;
- d) Date of shipment;
- e) Port of discharge and expected date of arrival of goods; and

Any other document(s) as and if required in terms of the contract.

#### ***6.4.4 Air Freight Charges***

Goods that are required to be airlifted are to be dispatched through Air India only on a 'charge forward basis'. All air freight charges, which are shown on the relevant consignment note as chargeable to the consignee, are to be paid to Air India in Rupees.

#### ***6.4.5 Letter of Credit***

Two banks are involved in payment to the supplier by LC: – the purchaser's bank and supplier's bank. The purchaser is to forward the request to its bank in the prescribed format as formulated by the State Bank of India, along with all relevant details including an authenticated copy of the contract. Based on this, the purchaser's bank opens the LC on behalf of the purchaser for transacting payment to the supplier through the supplier's bank. Care should be taken to ensure that the payment terms and documents to be produced for receiving payments through LC are identical with those shown in the contract. Generally, the irrevocable LC is opened so that the supplier is fully assured of his payment on fulfilling his obligations in terms of the contract. In case the delivery date of the contract is extended to take care of delay in supply, for which the supplier is responsible, the tenure of the LC is also to be extended, but the expense incurred for such an extension (of LC) is to be borne by the supplier. Provisions of Uniform Customs and Practices for Documentary Credits (UCP 600)<sup>28</sup> should be adhered to the while opening the LC for import into India.

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<sup>28</sup> The Uniform Customs and Practice for Documentary Credits (UCPDC or simply UCP) is a set of rules regarding techniques and methods for handling LCs in international trade finance which has been standardised by the International Chamber of Commerce – the current version being the UCP600.

## 6.5 Advance Payment

6.5.1 Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases:

- 1) Advance payment demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment, etc.;
- 2) Advance payment demanded by firms against fabrication contracts, turn-key contracts; and so on;
- 3) Hundred per cent advance payment for procurement of arms and ammunitions from ordnance factories; and
- 4) Other security-related procurement made by the Home Department.

Such advance payments should not exceed the following limits except in case of procurement of arms and ammunitions from ordnance factories:

- 1) Thirty per cent of the contract value to private firms;
- 2) Forty per cent of the contract value to a state or central government agency or PSU; or
- 3) In case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.
- 4) In exceptional cases, the Administrative Department may relax the ceilings mentioned above with prior concurrence of the Associated/ integrated Finance. While making any advance payment as above, adequate safeguards in the form of a bank guarantee, and so on, should be obtained from the firm. However, the bank guarantee need not be insisted upon in case of procurement of arms and ammunitions from ordnance factories. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on a case to case basis.

### 6.5.2 *Documents for Advance Payments*

Documents, needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority should also verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.

While claiming the payment, the supplier should also certify in the bill that the payment being claimed is strictly in terms of the contract and all obligations on the part of the supplier for claiming this payment have been fulfilled as required under the contract. There should also be a suitable

provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

### **6.5.3 Insurance**

In every case where advance payment or payment against dispatch documents is to be made or LC is to be opened, the condition of insurance should invariably be incorporated in the terms and conditions. Wherever necessary, the goods supplied under the contract, shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, insurance may cover "all risks" including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the procuring entity for receiving the goods at the destination. Where delivery of imported goods is required by the purchaser on CIF/CIP basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on FOB/FAS basis, marine/air insurance shall be the responsibility of the purchaser.

Note: Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rs. 5 crore.

## **6.6 Firm Price vis-à-vis Variable Price**

Short-term contracts where the delivery period does not extend beyond 18 months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the PVC may be stipulated for items with non-ferrous and other raw materials prone to short-term price volatility - especially for critical or high value items – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall. For high value (more than Rs. 3 crore) tenders with deliveries longer than 18 months, PVC may be provided to protect the purchaser's interests also.

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.

The variations are to be calculated periodically by using indices published by governments/ chambers of commerce/London Metal Exchange / any other neutral and fair source of indices.

Suitable weights are to be assigned to the applicable elements, that is, fixed overheads and profits, material and labour in the price variation formula. If the production of goods needs more than one raw material, the input cost of material may be further sub-divided for different categories of material, for which cost indices are published.

The following are important elements of PVC:

- a) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year. The raw materials used in manufacture are procured some weeks before the goods' submission for inspection. This period is called the time lag for price variation. It applies both for base date and date of supply. This time lag at both ends must be specified;
- b) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, 2 per cent of the contract price, no price adjustment will be made in favour of the supplier);
- c) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;
- d) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- e) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
- f) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;
- g) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by government;
- h) Where contracts are for supply of equipment, goods, and so on, imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;

- i) The clause should also contain the mode and terms of payment of the price variation admissible; and
- j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.

*An illustrative PVC clause is available in Annexure 15.*

Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC.

*"It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate."*

Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

## 6.7 Exchange Rate Variation

6.7.1 In case of a contract involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract), an appropriate Foreign Exchange Variation clause may be formulated by the procuring entity in consultation with its Associated/ integrated Finance, as needed, and incorporated in the tender enquiry document. In that clause, the tenderers are to be asked to indicate import content(s) and the currency (ies) used for calculating the value of import content(s) in their total quoted price, which (that is, the total quoted price) will be in Indian Rupees. The tenderers may be asked to indicate the Base Exchange rate for each such foreign currency used for converting the foreign exchange content into Indian Rupees and the extent of foreign Exchange Rate Variation (ERV) risk they are willing to bear.

To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the due date of opening of tenders/seven days prior to the due date of opening of tenders (the purchase organisation is to decide and adopt a suitable date). The variation may be allowed between the above base date and date of remittance to the foreign principal/mid-point of

manufacture of the foreign component (the purchase organization is to choose the appropriate date). The applicable exchange rates as above will be according to the TT selling rates of exchange as quoted by authorised exchange bankers approved by RBI on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus 30% (Thirty) per cent (the purchase organisation is to decide the figure).

Any increase or decrease in the customs duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case the delivery period is revised/extended, ERV will not be admissible, if this is due to the supplier's default; however, ERV benefits arising out of downward trends should be passed on to Procuring Entity. The procuring entity may formulate an appropriate ERV clause on similar lines as above in consultation with their Finance Wing.

#### **6.7.2 Documents for Claiming ERV**

- 1) A bill of ERV claim enclosing the working sheet;
- 2) Banker's certificate/debit advice detailing the foreign exchange paid and exchange rate;
- 3) Copies of the import order placed on the supplier; and
- 4) Supplier's invoice for the relevant import order.

### **6.8 Taxes, Duties and Levies**

#### **6.8.1 Statutory Duties and Taxes on Domestic Goods**

The duties and taxes including excise duty and VAT levied by the government on domestic goods vary from product to product. Unless a different intention appears from the terms of the contract, statutory variation in duties or taxes are to be borne by the buyer (procuring entity) as per the section 64A of the Sales of Goods Act, 1930. As a general policy, the statutory variations in such duties and taxes are to be allowed during the period from the date of the tender to the date of acceptance of the tender (that is, placement of the contract) and during the original/re-fixed delivery period of the contract so that both the supplier and purchaser are equally compensated for rise or fall in the price of the goods on account of such statutory variations.

*(Note: Re-fixed delivery period means the fresh delivery period which is arrived at by recasting the original contractual delivery period after taking care of the lost period, for which the supplier was not responsible.)*

In the tender enquiry conditions, the tenderers, wherever applicable, should be asked to specifically state in their offer whether they intend to ask for the duties and taxes as extra over and above the prices being quoted. In the absence of any indication to this effect by the tenderers, it is to be

assumed that the prices quoted include these elements and no claim for the taxes or duties or statutory variations thereon should be entertained after opening of tenders and during the currency of the resultant contract. If a tenderer chooses to quote price inclusive of excise duty/ Sales Tax/ VAT, it should be presumed that the duties/ taxes so included is firm unless he has clearly indicated the rate of duties/ taxes included in his price and also sought adjustment on account of statutory variation thereon. If a tenderer is exempted from payment of excise duty upto a certain value of turnover, he should clearly state that no excise duty will be charged by him upto the limit of exemption enjoyed by him. If any concession is available in regard to rate/quantum of Central Excise Duty, it should be brought out clearly. It should also be clearly indicated whether increase in rate of excise duty due to increase in turn over will be borne by the tenderer. Stipulation like, "excise duty is presently not applicable but the same will be charged if it becomes leviable later on", should not be accepted unless in such cases it is clearly stated by the tenderer that excise duty will not be charged by him even if the same becomes applicable later on due to increase in turnover. If a tenderer fails to comply with this requirement, his quoted price shall be loaded with the quantum of maximum excise duty which is normally applicable on the item in question for the purpose of comparison with the prices of other tenderers. The tenderers should indicate in their offer whether they are availing MODVAT/ Tax credits or not. If they are availing MODVAT/ Tax credits, they should take into account the entire credit on inputs available under such Schemes while quoting the price and furnish a declaration to this effect along with a confirmation that any further benefit available in future on account of such schemes would be passed on to the purchaser.

Note: Sales tax/ VAT are not levied on transactions of sale in the course of import. Categories of cases constituting sale in course of import are:

Sales tax/VAT is not levied on transactions of sale in the course of import. Categories of cases constituting sale in the course of import are:

- 1) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale;
- 2) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

### ***6.8.2 Octroi and Local Taxes***

In case the goods supplied against contracts placed by Procuring Entity are exempted from levy of town duty, Octroi duty, terminal tax and other levies of local bodies, the suppliers should be informed accordingly by incorporating suitable instructions in the tender enquiry document and in

the resultant contract. Wherever required, the supplier should obtain the exemption certificate from the Purchasing Department to avoid payment of such levies and taxes.

In case such payments are not exempted (or are demanded in spite of the exemption certificate), the supplier should make the payment to avoid delay in supplies and forward the receipt to the Purchasing Department for reimbursement and for further necessary action.

### ***6.8.3 Customs Duty on Imported Goods***

On imported goods, the tenderers shall also specify separately the total amount of custom duty included in the quoted price. The tenderers should also indicate correctly the rate of custom duty applicable for the goods in question and the corresponding Indian customs tariff number. Where customs duty is payable, the contract should clearly stipulate the quantum of duty payable, and so on, in unambiguous terms. The standard clauses to be utilised for this purpose are to be incorporated in the tender enquiry documents. Any import of materials directly from the supplier or manufacturer should be in the name of Procuring Entity. In this regard, all formalities will be completed by Procuring Entity engaging a Custom House Agent (CHA) and payment in this regard will be borne by Procuring Entity.

The government has allowed exemption from payment of customs duty on certain types of goods for use by the following organisations:

- 1) Scientific and technical instruments imported by research institutes;
- 2) Hospital equipment imported by government hospitals; and
- 3) Consumable goods imported by a public-funded research institution or a university.

However, to avail of such exemptions, the organisations are required to produce a "Custom Duty Exemption" certificate and "Not Manufactured in India" certificate at the appropriate time.

The relevant contemporary instructions covering these aspects should be incorporated in the tender enquiry document and in the resultant contract.

### ***6.8.4 Duties/Taxes on Raw Materials***

Procuring Entity is not liable for any claim from the supplier on account of fresh imposition and/or increase (including statutory increase) in excise duty, custom duty, sales tax, and so on, on raw materials and/or components used directly in the manufacture of the contracted goods taking place during the pendency of the contract, unless such liability is specifically agreed to in terms of the contract. A clause to this effect should also form part of the tender documents

## 6.9 Incoterms Terms of Delivery

Incoterms rules mainly describe the tasks, costs and risks involved in the delivery of goods from the seller to the buyer. The risk to goods (damage, loss, shortage, and so on) is the responsibility of the person who holds the 'title of goods' at that point of time. This may be different from actual physical possession of such goods. Normally, unless otherwise defined, the title of goods passes from the supplier to the purchaser in accordance with the terms of delivery (FOR, CFR, among others). The terms of delivery, therefore, specify when the ownership and title of goods pass from the seller to buyer, along with the associated risks. Incoterms as described by the International Chamber of Commerce are an internationally accepted interpretation of the terms of delivery. These terms of delivery allocate responsibilities to the buyer and seller, with respect to:

- 1) Control and care of the goods while in transit;
- 2) Carrier selection, transfers and related issues;
- 3) Costs of freight, insurance, taxes, duties and forwarding fees; and
- 4) Documentation, problem resolution and other related issues.

Table 1: Incoterms and their applications	
INCOTERMS Options	Applicable to
Ex-Group of Terms	Buyer takes full responsibility from point of departure
EXW – Ex-Works	Any mode of transport
Free Group of Terms	freight is not paid by the seller
FCA – Free Carrier	Any mode of transport
FAS – Free Alongside Ship	Sea and inland waterway transport only
FOB – Free On Board	
C Group of Terms	Freight is paid by the seller
CPT – Carriage Paid To	Any mode of transport
CIP – Carriage and Insurance Paid to	Any mode of transport
CFR – Cost and Freight	Sea and inland waterway transport only
CIF – Cost, Insurance and Freight	
Delivered Group of Terms	Seller takes responsibility from an intermediate point onwards
DAT – Delivered At Terminal	Any mode of transport
DAP – Delivered At Place	Any mode of transport
DDP – Delivered Duty Paid	Any mode of transport

In use since 1936, Incoterms have been revised in 2010. Out of the 11 Incoterms options, seven apply to all modes of transportation whereas four apply only to water transportation. The options range from one extreme – the buyer takes full responsibility from point of departure – to the other extreme: the seller is responsible all the way through delivery to the buyer's location. It is easiest to understand terms as per their nomenclature groupings: 'ex' group of terms where the buyer

takes full responsibility from point of departure; 'free' group of terms in which the freight is not paid by the seller; 'C' group of terms in which the freight is paid by the seller; and 'delivered' group of

terms where the seller takes full responsibility from an intermediate point to an arrival point (Annexure 16).

Within national transportation, certain terms have assumed acceptance due to usage. FOR has two versions: FOR/dispatching and FOR/destination (the buyer is responsible from the nominated point mentioned till arrival point, as in Delivery at Terminal). Infrequently, it is also used in road transport as FOT.

## **6.10 e-Payment**

e -Banking and e-payments are now used by various banks by adopting Electronic Clearing System (ECS) and Electronic Fund Transfer (NEFT/ RTGS) procedure. Payments to suppliers may be made through such mechanism where such facilities are available. As per RBI guidelines, ECS mandate in RBI's format may be obtained at the time of registration of suppliers and in the bid document. The Format is available with all Banks.

## **6.11 Deduction of Income Tax, Service Tax, and so on, at Source from Payments to Suppliers**

This will be done as per the existing law in force during the currency of the contract.

## **6.12 Recovery of Public Money from Supplier's Bill**

Sometimes, requests are received from a different ministry/department for withholding some payment of a supplier out of the payment due to it against a contract. Such requests are to be examined by the ministry/department (which has received the request) on the merits of the case for further action. It will, however, be the responsibility of the ministry/department asking for withholding of payment to defend the government against any legal procedure arising out of such withholding as also for payment of any interest thereof.

## **6.13 Refund from Supplier**

Sometimes, the supplier, after claiming and receiving reimbursements for sales tax, excise duty, custom duty, and so on, from the purchaser, applies to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties and taxes paid by it and receives the allowable refunds. Such refunds contain the purchaser's share also (out of the payments already made by the purchaser to that supplier). The tender enquiry document and the contract are to contain suitable provisions for obtaining such refunds from the supplier.

### **6.14 Payment against Time Barred Claims**

Ordinarily, all claims against the government are time barred after a period of three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. However, the limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. The drill to be followed while dealing with time barred claims will be decided by the ministry/department concerned in consultation with the paying authority. The paying authority is to ensure that no payment against such time barred claim is made till a decision has been taken in this regard by the CA.

## **Chapter 7: Evaluation of Bids and Award of Contract**

### **7.1 Tender Evaluation**

7.1.1 The evaluation of tenders is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender document and those stipulated by the tenderers in their tenders. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Similarly, no tender enquiry condition (especially the significant/essential ones) should be overlooked/ relaxed while evaluating the tenders. The aim should be ensure that no tenderer gets undue advantage at the cost of other tenderers and/or at the cost of Procuring Entity. Information relating to evaluation of tenders and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process. The process of tender evaluation proceeds is described in the subsequent paras.

#### **7.1.2 Doctrine of Substantial Compliance/ Responsiveness**

It is a settled position of law that during evaluation of tenders, the Public Procuring Entity is well within legal boundaries, to waive immaterial irregularities (non-compliance/ non-responsiveness) of little or no significance in a transparent manner and not to insist upon a strict compliance of ancillary and subsidiary conditions.

*"As a matter of general proposition it cannot be laid down that an authority inviting tenders in bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirement in a tender notice can be classified into two categories-those which lay down the essential conditions of eligibility and the other which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other case it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate case. (Supreme Court Judgement — Poddar Steel Corp v Ganesh Engineering Works (1991) 3 SCC 273)*

To effectively derive VfM from the expenditure of Public Money, without sacrificing the Transparency principle, the main aim of the tendering is to foster as wide a competition as possible within the bids that are '**substantially complying-with/ responsive-to**' the eligibility, pre-qualification or ancillary/ subsidiary criteria/ conditions. The process of preliminary/ eligibility/ qualification/ techno-commercial/ Financial Bids evaluation is neither intended to bestow any

entitlement upon nor to create any rights or privileges for the Bidders, by way of overly hair-splitting or viciously legalistic contentious interpretations for or against inclusion of an offer. During evaluation of tenders, procuring entity must prefer inclusion of an offer despite immaterial non-compliance/ non-responsiveness, rather than its rejection on strict literal compliance. Non-compliance may be considered as an immaterial non-compliance if it does not:

- i). Dilute, in any substantial way eligibility/ qualification criteria;
- ii). Affect, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract;
- iii). Limits, in any substantial way, inconsistent with the tendering documents, the procuring entity's rights or the tenderer's obligations under the contract; or
- iv). If rectified, would unfairly and materially affect the competitive position of other tenderers quoting substantially responsive tenders.

For example, if EMD validity has been specified as three months and a bidder submits EMD with a validity of 90 days (which falls short of three calendar months by one or two days), then although as per strict literal and legalistic interpretation, this is a non-compliant bid, yet it is acceptable since it meets the criteria of immaterial non-compliance above. Similarly if the past experience criteria lays down that the firm must have supplied and commissioned the machine in question during last 3 years ending March' 2016, and the bidder has supplied and commissioned in relevant time-frame that machine as part of a turnkey project, where the full turnkey project was completed and commissioned in April 2016. Such a situation would also meet the above guidelines and the bids may be included rather than rejected.

If this Doctrine of Substantial Compliance is included in the Bid-documents/ PQC and is equitably and consistently implemented, it would meet the norms of Transparency Principle.

## 7.2 Schedule of Procurement Powers (SoPP)

There are delegations upto a threshold value below which the evaluation of the Bids may be entrusted solely and directly by individual competent authority, without involvement of a Tender committee or any evaluation report. He would himself carry out all the steps in evaluation described below, instead of the TC and directly records reasons and decision on the file itself. He may ask for a Technical Suitability report from User Departments, if so needed. In procurements above such a threshold, evaluation is by Tender Committee consisting of three or more officers. Procuring Entity should lay down a Schedule of Procurement Powers (SoPP) detail such thresholds. It can also lay down the powers jurisdiction and composition of different levels of Tender Committee and

corresponding Accepting Authority for different categories of procurement and different threshold values of procurements. A suggested format for SoPP is at Annexure 2C, however exact values of threshold would have to be decided by Procuring Entity themselves. Competent authority, in direct acceptance case; and member secretary of the Tender Committee will receive the bids opened along with other documents from the tender opening officials and are responsible for safe-custody of the documents and for processing involved at all steps in finalising the Procurement.

### **7.3 Preparation and Vetting of Comparative Statement**

Except in cases upto Rs 25 Lakhs (Rupees Twenty Five Lakhs) the Procuring Entity should prepare a comparative statement of quotations received in the order in which tenders were opened. In case of Techno-Commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of Technical suitability of offers. In case of Financial bid it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc The comparative statement so prepared should be signed by the concerned officers. It may also be vetted by the associated/ integrated Finance for veracity of information.

### **7.3 Preliminary Examination**

#### ***7.3.1 Unresponsive Tenders***

Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive and ignored. All tenders received will first be scrutinised by the TC to see whether the tenders meet the basic requirements as incorporated in the Bid document and to identify unresponsive tenders, if any. Some important points on the basis of which a tender may be declared as unresponsive and be ignored during the initial scrutiny are:

- a) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;
- b) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- c) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder has to be a registered SSI unit but the tenderer is a, say, a large scale unit);
- d) The tenderer has quoted for goods manufactured by a different firm without the required authority letter from the proposed manufacturer;

- e) The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security); or
- f) Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

### ***7.3.2 Non-conformities between Figures and Words***

Sometimes, non-conformities/errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This should be taken care of in the manner indicated below:

- a) If, in the price structure quoted for the required goods, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly;
- b) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected; and
- c) If there is a discrepancy between words and figures, the amount in words shall prevail.
- d) Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to Procuring Entity's observation, the tender is liable to be rejected.

### ***7.3.3 Discrepancies between Original and Additional/ Scanned Copies of a Tender***

Discrepancies can also be observed in responsive tenders between the original copy and other copies of the same tender set. In such a case, the text, and so on, of the original copy will prevail. Here also, this issue is to be taken up with the tenderer in the same manner as above and subsequent actions taken accordingly. In eProcurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder. However normally no submission of original documents in physical format (other than Cost of Bid Documents, Bid Security and statutory certificates if any) should be asked for in eProcurement

### ***7.3.4 Minor Infirmitiy/Irregularity/Non-conformity***

During the preliminary examination, some minor infirmitiy and/or irregularity and/or non-conformity may also be found in some tenders. Such minor issues could be a missing pages/ attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document.

There have been also cases where the bidder submitted the amendment Bank Guarantee, but omitted to submit the main portion of Bid Document. The court ruled that this is a minor irregularity. Such minor issues may be waived provided they do not constitute any material deviation (please refer to Para 7.4.2 (d)) and financial impact and, also, do not prejudice or affect the ranking order of the tenderers. Wherever necessary, observations on such 'minor' issues (as mentioned above) may be conveyed to the tenderer by registered letter/speed post, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform Procuring Entity's view or respond by that specified date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

### ***7.3.5 Clarification of Bids/ Shortfall Documents***

During evaluation and comparison of bids, the purchaser may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/speed post, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, registration with sales tax/ VAT has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for so as to qualify the bidder.

## **7.4 Evaluation of Responsive Bids and Decision on Award of Contract**

**7.4.1** All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder who meets the qualification criteria and techno-commercial aspects. In case of single stage single envelop bidding, the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously. In single stage multiple envelops, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the

qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder among these and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them. In two stage bids, the PQB/ EOI stage would have already been evaluated as detailed in Chapter 4 and this second stage is for evaluation of responses to the Second Stage multiple envelops from the shortlisted qualified bidders. Evaluation of techno-commercial and financial aspects are, however, discussed separately below. It is of utmost importance that the authenticity, integrity and sanctity of unopened Financial Bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelop, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

### ***Evaluation of Techno-commercial Bid***

In evaluation of the techno-commercial bid, conformity of the eligibility/qualification, technical and commercial conditions of the offered goods to those in the bid document is ascertained. Additional factors, if any, incorporated in the tender documents may also be considered in the manner indicated therein. Evaluation has to be based only on the conditions included in the tender document and any other condition should not form the basis of this evaluation.

- a) **Evaluation of eligibility/ qualification Criteria:** Procuring Entity will determine, to its satisfaction, whether the tenderers are eligible, qualified and capable in all respects to perform the contract satisfactorily. Tenders that do not meet the required eligibility/qualification criteria prescribed will be treated as unresponsive and not considered further. This determination will, inter-alia, take into account the tenderer's financial, technical and production capabilities for satisfying all of Procuring Entity's requirements as incorporated in the tender document. Such determination will be based upon scrutiny and examination of all relevant data and details submitted by the tenderer in its/his tender as well as such other allied information as deemed appropriate by Procuring Entity.
- b) **Evaluation of Technical Suitability:** The description, specifications, drawings and other technical terms and conditions are examined by TC in general and a technical member of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. Even if an external expert's advice and report is obtained, it is still the responsibility of the technical member in particular and the TC in general to accept/reject or modify the evaluation contained in such a report/evaluation. The tender document should clearly state whether alternative offers/makes/models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/ deviation form submitted by the tenderer. It is important to judge whether

an exception/deviation is minor or major. Minor exceptions/deviations may be waived provided they do not constitute any material deviation and do not have significant financial impact and, also, would not prejudice or affect the ranking order of the price bid.

Exceptions/deviations should not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.

- c) **Evaluation of Commercial Conditions:** The TC will also evaluate the commercial conditions quoted by the tenderer to confirm that all terms and conditions specified in the GCC/SCC have been accepted without reservations by the tenderer. Only minor deviations may be accepted/allowed, provided these do not constitute material deviations without financial impact and do not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.
- d) **Considering Minor Deviations:** Court has consistently taken a view that procuring entity is entitled to consider and allow minor deviations, which do not amount to material deviations. A material deviation, reservation, or omission which should not be waived are those that:
  - v). Affects, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract;
  - vi). Limits, in any substantial way, inconsistent with the tendering documents, the procuring entity's rights or the tenderer's obligations under the contract; or
  - vii). If rectified, would unfairly affect the competitive position of other tenderers quoting substantially responsive tenders.
- e) **Declaration of Successful Bidders:** If it is a multiple envelop tender, then the TC prepares a recommendation of techno-commercial bid (Annexure 11) to declare successful bidders. In such cases, after the approval of CA, the results of the Techno-commercial bid evaluation are to be announced (including informing the failed Bidders). Price bids are opened in the presence of technically suitable bidders, who are willing to attend the bid opening, at a pre-publicised date, time and place or on the portal in case of e-procurement. In single envelop/cover tender, TC proceeds to evaluate the price aspects without a reference to CA at this stage.

#### **7.4.2 Right of Bidder to question rejection at Techno-commercial Stage**

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his Techno-commercial bid has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. On receipt of representation it may be decided whether to withhold opening of the financial bids and bidder may be expeditiously replied. Certain

decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review as mentioned in para 7.6.3 below.

### ***7.4.3 Evaluation of Financial Bids and Ranking of Tenders***

#### ***A. In general:***

- a) If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid should be treated as unresponsive;
- b) Sometime certain bidders offer suo motu discounts and rebates after opening of the tender (techno-commercial or financial). Such rebates/discounts should not be considered for the purpose of ranking the offer but if such a firm does become L1 at its original offer, such suo motu rebates can be incorporated in the contracts. This also applies to conditional rebates, for example, rebate for faster payments, and so on;
- c) Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter there should be no relaxation during evaluation. Moreover, sometimes, while purchasing sophisticated and costly equipment, machinery, and so on, the procuring entity also gives special importance to factors such as high quality performance, environmental-friendly features, low running cost, low maintenance cost, and so on. To take care of this, relevant details are to be incorporated in the bid document and the criteria adopted to assess the benefit of such features while evaluating the offers are also to be clearly stipulated in the tender enquiry document so that the tenderers are aware of it and quote accordingly. While evaluating such offers, these aspects are also to be taken into account. Such details, whenever considered necessary, should be evolved by the competent technical authority for incorporation in the tender document, so that there is no ambiguity and/or vagueness in them;
- d) Normally, the comparison of the responsive tenders shall be on total outgo from the Procuring Entity's pocket, for the procurement to be paid to the supplier or any third party, including all elements of costs as per the terms of the proposed contract, including any taxes, duties, levies etc, freight insurance etc. Therefore it should normally be on the basis of CIF/ FOR destination basis, duly delivered, commissioned, as the case may be:
  - a) In the case of goods manufactured in India or goods of foreign origin already located in India, VAT/sales tax and excise duty and other similar taxes and duties,

which will be contractually payable (to the tenderer) on the goods are to be added;

- b) In the case of goods of foreign origin offered from abroad, customs duty and other similar import duties/taxes, which will be contractually payable (to the tenderer) on the goods, are to be added;
- e) As per policies of the government from time to time, the purchaser reserves his option to give price/ purchase preferences as indicated in the tender document;
- f) In case the list of requirements contains more than one schedule, the responsive, technically suitable tenders will be evaluated and compared separately for each schedule. The tender for a schedule will not be considered if the complete requirements prescribed in that schedule are not included in the tender. However, tenderers have the option to quote for any one or more schedules and offer discounts for combined schedules. Such discounts, wherever applicable, will be taken into account to for deciding the lowest evaluated cost for Procuring Entity in deciding the successful tenderer for each schedule, subject to that tenderer(s) being responsive; and
  - g) If the tenders have been invited on a variable price basis, the tenders will be evaluated, compared and ranked on the basis of the position prevailing on the day of tender (Technical Bid) opening and not on the basis of any future date.

## ***B. GTE Tenders***

Special aspects of evaluation of the financial offer in GTE tenders are:

**a) Currency of Tender**

In GTE tenders, the price in the quotation could be in US Dollar or Euro or Pound Sterling or Yen or in currencies under the RBI's notified basket of currencies, in addition to the Indian Rupees, except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. All offers are to be converted to Indian Rupees based on the "Bill currency selling" exchange rate on the date of tender opening (Techno-commercial offer) from a source as specified in the tender document.

**b) Currency of Payment**

The contract price will be normally paid in the currency/currencies in which the price is stated in the contract.

**c) Evaluation of Offers**

As per government policy, ministries/departments/Public Sector Undertakings (PSUs) should ensure imports on FOB/FAS basis failing which a No Objection Certificate (NOC) should be obtained from the Ministry of Surface Transport (Chartering Wing).

The foreign bidders are normally asked, in the bid documents, to quote both on FAS/FOB basis and also on Cost and Freight (CFR)/CIF basis duly indicating the break-up of prices for freight, insurance, and so on, with purchasers reserving the right to order on either basis. They should also indicate the custom tariff number and custom duty applicable in India. In the case of FAS/FOB offers, the freight and insurance shall be (after ascertaining, if not quoted) added to make up the CIF cost. To arrive at the Free On Rail (FOR) cost, 1 per cent shall be added over and above CIF as port handling charges, custom duty, countervailing duty and surcharges, as applicable on the date of opening of the tender, as well as clearing agency charges, inland freight and Octroi/ entry tax, as assessed, may be added to make it a FOR/Free On Truck (FOT) destination. The FOR/FOT destination price for domestic offers may be calculated as in OTE tenders. For bids with Letter of Credit (LC) payment, the likely LC charges (as ascertained from Procuring Entity's bankers) should also be loaded.

In case both Indian and foreign bidders have quoted in the tender, the comparison of the offers would be done on the basis of FOR/FOT destination including all applicable taxes and duties (on the principle of the total outgo from Procuring Entity's pockets). In case there are no domestic bidders, a comparison of offers can be made on the basis of CIF/landed costs since the rest of costs would be same for all bidders.

## 7.5 Deliberations by the Tender Committee for Award of Contract

### 7.5.1 *Timely Processing of Tenders*

An atmosphere of lackadaisical routine delays in finalisation of tenders are likely to result in higher bids in future tenders. To enable timely decision making, complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. Every official in the chain of the procurement operation is accountable for taking action in a specified time so that the tender is finalised on time. Any deviation from the schedule may be monitored and explained, by way of system of Management Reporting (Appendix 4 and 5). As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded. The suggestive time schedule in Table 2 is a guideline for finalising contracts against various modes of procurements.

<b>SL. No.</b>	<b>Table 2. Indicative time schedule</b>		
	<b>Mode of Procurement</b>	<b>Indigenous</b>	<b>Imported</b>
1	Open tender/ (e-tendering)	75 days	90 days
2	Procurement through registered vendors/ (Special) limited tenders	60 days	75 days
3	Proprietary basis/nomination basis	45 days	60 days

This time schedule is only indicative and the schedule shall be subject to change based on the nature of requirements, sourcing, sample evaluation, site visit/pre-bid meeting with prospective bidders and government, guidelines, and so on.

#### **7.5.2 Extension of Tender Validity Period**

The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done expeditiously and within the original tender validity period. The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for a longer period entails the risk of getting higher prices from the tenderers.

If, however, due to some exceptional and unforeseen reasons, the purchase organisation is unable to decide on the placement of the contract within the original validity period, it may preferably request, before expiry of the original validity period, all the responsive tenderers to extend their tenders up to a specified period. While asking for such extension, the tenderers are also to be asked to extend their offers as it is, without any changes therein. They may also be told to extend the validity of the EMD for the corresponding additional period (which is to be specified in the request). A tenderer may not agree to such a request and this will not be tantamount to forfeiture of its EMD. But the tenderers, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders.

#### **7.5.3 Variation of Quantities at the Time of Award**

At the time of awarding the contract, the quantity to be procured must be re-judged based on the current data, since the ground situation may have very well changed. The tendered quantity can be increased or decreased by 25 per cent for ordering, if so warranted. This may be mentioned in the tender documents. Any larger variation may throw up issues about transparency.

#### **7.5.4 Option clause**

In case of long running, yearly procurements, to take care of any change in the requirement during the currency of the contract, a plus/minus option clause (normally 25 per cent) is incorporated in the tender document, reserving purchaser's right to increase or decrease the quantity of the required goods up to that limit without any change in the terms and conditions and prices quoted by the

tenderers. Higher the option limit more is the uncertainty for the tenderers in formulating their prices and more is the chance of loading on the prices quoted to take care of such uncertainties.

### **7.5.5 *Splitting of Contracts/ Parallel Contracts***

After due processing, if it is discovered that the quantity to be ordered is far more than what L1 alone is capable of supplying and there was no prior decision/ declaration in the bidding documents to split the quantities, then the quantity being finally ordered may be distributed among the other bidders by counter offering the L1 rate in a manner that is fair, transparent and equitable based on objective data available in the bids e.g. eligibility data, Quantity/ Delivery etc.

However, in case of critical/ vital/ safety/ security nature of the item, large quantity under procurement, urgent delivery requirements and inadequate vendor capacity it may be advantageous to decide in advance to have more than one source of supply. In such cases a parallel contract clause should be added to the bid documents, clearly stating that Procuring Entity reserves the right to split the contract quantity between suppliers. The manner of deciding the relative share of lowest bidder (L1) contractor and the rest of the contractors/tenderers should be clearly defined, along with the minimum number of suppliers sought for the contract. In case of splitting in two and three, the ratio of 70:30; 50:30:20, respectively, may be used – a different ratio may also be justified.

Before splitting the quantity, it should be ensured that the L1 price is reasonable. If it is not reasonable, negotiation with the L1 party may be carried out, if justifiable, with the approval of the CA. The following guidelines are to be considered while opting for parallel contracts:

- a) L1 should be awarded at least the percentage mentioned above or his spare supply capacity, whichever is lower; and
- b) For the rest of the contract quantity, the lowest rate accepted will be counter offered to the L2 party. On acceptance of the counter offer, the order will be placed on L2 for the respective percentage or the spare supply capacity of the L2 bidder, whichever is lower, and so on, to other tenderers. In case of non-acceptance of the counter offer by the L2 party, a similar offer shall be made to L3 and L4, and so on.

### **7.5.6 *Reasonableness of Prices***

In every recommendation of the TC for award of contract, it must be declared that the rates recommended are reasonable.

*(For more details on judging reasonableness of prices, please see para 2.2.1 (f) in Chapter 2 above).*

Where there is no estimated cost, a comparison with Last Purchase Price (LPP - the price paid in the latest successful contract) is the basis for judging reasonableness of rates. The following points may be kept in mind before LPP is relied upon as a basis for justifying rate reasonableness:

- a) The basic price, taxes, duties, transportation charges, Packing and Forwarding charges should be indicated separately;
- b) Where the firm holding the LPP contract has defaulted, the fact should be highlighted and the price paid against the latest contract placed prior to the defaulting LPP contract, where supplies have been completed, should be used;
- c) Where the supply against the LPP contract is yet to commence, that is, delivery is not yet due, it should be taken as LPP with caution, especially if the supplier is new, the price paid against the previous contract may also be kept in view;
- d) Where the price indicated in the LPP is subject to variation or if it is more than a year old, the updated price or as computed in case of the Price Variation Clause (PVC) may also be indicated;
- e) In the case of wholly imported stores, the comparison of the last purchase rate should be made with the net CIF value at the current foreign exchange rate;
- f) It is natural to have marginal differences in prices obtained at different cities/offices for the same item, due to their different circumstances. The prices obtained are greatly influenced by quantity, delivery period, terms of the contract, these may be kept in view; and
  - g) Prices paid in emergencies or prices offered in a distress sale are not accurate guidelines for future use. Such purchase orders and TC proceedings should indicate that "these prices are not valid LPP for comparison in future procurement".

#### **7.5.7 *Cartel Formation/Pool Rates***

It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/control true competition in a tender leading to "appreciable adverse effect on competition" have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. Such practices should be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter-alia, to

take suitable strong actions against such firms. New firms may also be encouraged to get themselves registered for the subject goods to break the monopolistic attitude of the firms forming a cartel.

Changes in the mode of procurement (GTE instead of OTE) and packaging/slicing of the tendered quantity and items may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

### **7.5.8 Negotiations**

- a) Normally, there should be no negotiation. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/pool rates are suspected, should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates. The circumstances where negotiations may be considered could be:
  - 1) Where the procurement is done on nomination basis;
  - 2) Procurement is from single or limited sources;
  - 3) Procurements where there is suspicion of cartel formation which should be recorded; and
  - 4) Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.

The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC.

Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.

Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to

L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.

After the CA has decided to call a specific bidder for negotiation, the following procedure should be adopted:

- 1) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
- 2) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 12, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
- 3) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating supplier as per Annexure 12; and
  - 4) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 13. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

#### **7.5.9 Consideration of Lack of Competition in OTE/ GTE and LTE**

Sometimes, against advertised/limited tender cases, the procuring entity may not receive a sufficient number of bids and/or after analysing the bids, ends up with only one responsive bid – a situation referred to as 'Single Offer'. As per Rule 21 of DFPR (explanation sub-para), such situation of 'Single Offer' is to be treated as Single Tender. The contract may be placed on the 'Single Offer' bidder provided the quoted price is reasonable. However restricted powers of Single tender mode of procurement would apply. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable. Before retendering, the procuring entity is first to check whether, while floating/issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly specification, wide publicity, sufficient time for bidding, and so on, were

fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies. Unsolicited offers against LTEs should be ignored.

#### **7.5.10 Cancellation of Procurement Process/ Rejection of All Bids/Re-tender**

1. The Procuring Entity may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision, all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened.
  - a) If the quantity and quality of requirements have changed substantially or there is an unrectifiable infirmity in the bidding process;
  - b) The purchaser would be justified in rejecting all tenders when none of the tenders is substantially responsive. However, the lack of competition should not be the only criterion, on the basis of the number of bids received, for rejection.
  - c) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the procuring entity shall cancel the procurement process. Provided that the procuring entity, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons to be recorded in writing, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.
2. Approval for re-tendering should be accorded by the CA after recording the reasons/proper justification in writing. The purchaser should review the qualification criteria, and technical and commercial terms of the tender before re-tendering and also consider wider publicity to attract an adequate number of responses. The decision of the procuring entity to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process.

### ***7.5.11 Handling Dissent among Tender Committee***

Tender Committee duties are to be discharged personally by the nominated officers. They may take help of their subordinate officers by way of reports/ evaluations, but they would still be answerable for such decisions. TC members cannot co-opt or nominate others to attend deliberations on their behalf. TC deliberations are best held across the table and not through circulation of notes.

All members of the TC should resolve their differences through personal discussions instead of making to and fro references in writing. In cases where it is not possible to come to a consensus and differences persist amongst TC members, the reasons for dissent of a member should be recorded in a balanced manner along with the majority's views on the dissent note. The final recommendations should be that of the majority view. However, such situations should be rare. The tender accepting authority can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.

In cases where the CA does not agree with the majority or unanimous recommendations of the TC, he should record his views and, if possible, firstly send it back to TC to reconsider along the lines of the tender accepting authority's views. However, if the TC, after considering the views of the CA, sticks to its own earlier recommendations, the tender accepting authority can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

### ***7.5.12 Independence, Impartiality, Confidentiality and 'No Conflict of Interest' at all Stages of Evaluation of Bids***

All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TC should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. They should sign a declaration at the end of their reports/notings stating that, "I declare that I have no conflict of interest with any of the bidder in this tender". TC members may make such a declaration at the end of their reports.

### ***7.5.13 Tender Committee Recommendations/Report***

The TC has to make formal recommendations (Annexure 11) for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily

and his credentials have been verified. It is a good practice that TC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the TC that any deviation/variation quoted by the supplier in his bid are not left undiscussed and ruled upon in the TC; otherwise there may be delay in acceptance of the contract by the supplier. These recommendations are submitted for approval to the tender accepting authority. Since a nominee of Financial Adviser of the Department is usually a member of the Tender Committee, there is no need for the CA to consult the FA of the Department before accepting the TC recommendations. In any purchase decision, the responsibility of the CA is not discharged merely by selecting the cheapest offer or accepting TC recommendations but ensuring whether:

- a) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
- b) He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;
- c) The price of the offer is reasonable and consistent with the quality required; and
- d) The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

After the acceptance of these recommendations by the tender accepting authority, the Letter (Notification) of Award (LOA) can be issued.

## 7.6 Award of Contract

### 7.6.1 *LOA to Successful Bidder*

Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, specification of the goods ordered, prices, and so on) in writing by a registered letter or any other acknowledgeable and fool proof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities (please refer to Para 2.9.1 of Appendix 2). A template for the Letter of Acceptance (or Notice of Award, or Acceptance of Tender) is given in Annexure 14. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period (generally 14 days).

In respect of contracts for purchases valued Rs. 1 lakh and above, where tender documents include the GCC, SCC and schedule of requirements, the letter of acceptance will result in a binding contract. All delivery liabilities would be counted from the date of LOA.

### **7.6.2 *Publication of Tender Results and Return of EMD of Unsuccessful Bidders***

The name of the successful tenderer awarded the contract should be mentioned in the notice board/bulletin/website of the concerned ministry or department /eProcurement Portal and CPPP. In case publication of such information is sensitive from commercial or security aspects, dispensation may be sought from publishing of such results by obtaining sanction from the Secretary of the Department with the concurrence of IFD. Upon the successful bidder furnishing the signed agreement and performance security, each unsuccessful bidder will be promptly notified and their bid security be returned without interest within 30 days of notice of award of contract. The successful supplier's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

### **7.6.3 *Bidder's right to question rejection at this stage***

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his tender has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. But, such representation has to be sent within 10 days from the date of LoA and to be replied to (by the procuring entity) expeditiously. Following decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review:

- a) Determination of the need for procurement;
- b) Selection of the mode of procurement or bidding system;
- c) Choice of selection procedure;
- d) Provisions limiting participation of bidders in the procurement process;
- e) The decision to enter into negotiations with the L1 bidder;
- f) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;
- g) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/contractor; and
- h) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.

#### ***7.6.4 Performance Security***

The supplier receiving the LOA is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form by the specified date; failing this necessary action including forfeiture of EDM will be taken against the supplier.

#### ***7.6.5 Acknowledgement of Contract by Successful Bidder and Execution***

After the successful bidder is notified that his bid has been accepted, he will be sent an agreement for signature and return, incorporating all agreements between the parties.

The supplier should acknowledge and unconditionally accept, sign, date and return the agreement within 14 days from the date of issue of the contract in case of OTE and 28 days in case of GTE. Such acknowledgements may not be required in low value contracts, below Rs 1 Lakh or when the bidders offer has been accepted in entirety, without any modifications. While acknowledging the contract, the supplier may raise issues and/or ask for modifications against some entries in the contract; such aspects shall be immediately be looked into for necessary action and, thereafter, the supplier's unconditional acceptance of the contract obtained. If both parties (Procuring Entity and the supplier) simultaneously sign the contract across the table, further acknowledgement from the supplier is not required. It should also be made known to the successful tenderer that in case he does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful tenderer).

All contracts shall be signed and entered into after receipt and verification of the requisite performance security, by an authority empowered to do so by or under the orders of the President of India in terms of Article 299 (1) of the Constitution of India. The words "for and on behalf of the President of India" should follow the designation appended below the signature of the officer authorised on this behalf. The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the DFPR. No contract on behalf of an organisation of Procuring Entity should be entered into by any authority which has not been empowered to do so under the orders of the state government.

#### ***7.6.6 Framing of Contract***

The following general principles should be observed while entering into contracts:

- a) Any agreement shall be issued strictly as per approved TC recommendations, be vetted by the Associated/ integrated Finance and approved by CA. The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or

indefinite liability, except in the case of a cost plus contract or where there is PVC in the contract. In other words, no contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the Associated/ integrated Finance.

- b) All contracts shall contain a provision for
  - a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
  - b) A warranty clause/defect liability clause should be incorporated in contracts for plant and machinery, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/ works/services;
  - c) All contracts for supply of goods should reserve the right of the government to reject goods which do not conform to the specifications;
  - d) Payment of all applicable taxes by the contractor or supplier; and
  - e) When a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the government at any time on the expiry of six months' notice to that effect.
- c) Standard forms of contracts should be invariably adopted, except in following cases:
  - a) Authorities competent to make purchases may, at their discretion, make purchases of value up to Rs. 1 lakh by issuing purchase orders containing basic terms and conditions;
  - b) In cases where standard forms of contracts are not used or where modifications in standard forms are considered necessary in respect of individual contracts, legal and financial advice should be taken in drafting the clauses in the contract and approval of CAs is to be obtained; and
  - d) Copies of all contracts and agreements for purchases of the value of Rs. 25 lakh and above, and of all rate and running contracts entered into by civil departments of the government should be sent to the Accountant General.

#### **7.6.7 Safe Custody and Monitoring of EMD, PBG and Other Instruments**

After the bid opening, in cases where EMDs/performance guarantees are submitted in the form of bank guarantees, the procuring entity should forward them to the Associated/ integrated Finance for safe custody. There should be a separate register maintained by the procuring entity for financial

documents received for effective tracking of the validity of the instruments. The procuring entity should advise the Associated/ integrated Finance to take necessary actions on time for the extension or encashment or refund of EMDs and performance securities, as the case may be.

### 7.6.8 **Procurement Records**

The Procurement file should start with the Indent and related documents. All subsequent documents relating to procurement planning; Copy of Bid Document and documents relating to its and formulation, publishing and issue/ uploading; Bid Opening; Bids received; Correspondence and documents (including Technical Evaluation and TC report) relating to pre-qualification, evaluation, Award of Contract; and finally the Contract copy, should be kept on the file. In case of bulky Bids received, all bids received may be kept in a separate volume, with a copy of accepted bids later being put on the main volume. To maintain integrity of the records relating to Procurement, these files should be kept secure and for contract management a new volume of file may be opened to obviate frequent exposure of sensitive procurement file. In contract management volume, copies of successful bid, Tender Committee Report, Contract may also be kept for ready reference, besides correspondence and documents relating to Contract Management and its closure.

<b>7.6.9 Evaluation of Bids and Award of Contract - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
<b>Evaluation of bids</b> is subjective or leaves room for manipulation and biased assessments. Some TC members may not be independent or neutral or may have conflict of interest.	TC should give an undertaking at the appropriate time that none of the members has any personal interest in the companies/agencies participating in the tender process. Any member having an interest in any company should refrain from participating in the TC. Some members of a TC may be subordinate to or related others in a strictly hierarchical organisation, so that they are not free to express independent views – such a situation must be avoided when constituting the TC.
<b>Discriminating against a Best Value Bid:</b> In case a bidder's bid (not in the good books of the procuring entity) becomes the best value bid as per the evaluation criteria, some of the following actions may have risks of misuse. There is also a reverse risk in these actions if a favourite becomes best value bid:	Mitigation for each type of risk is mentioned below.
<b>Unwarranted rebidding:</b> Rejecting all bids and calling for rebidding on the pretext of prices being high, change of specifications, budget not being available, and so on.	<b>In case a procurement is rebid more than once</b> , approval of one level above the CA may be taken. Please also see the complaint mechanism.
<b>Sudden quantity reduction/increase or splitting of quantity work at the time of award:</b> Many organisations have provisions for change/ splitting in the bid quantity at the time of award. Some organisations vary quantity even without such	<b>Bid conditions must specify a limit</b> beyond which originally announced quantity/scope cannot be reduced/ increased. If parallel contracts are envisaged, clear criteria for the splitting may be specified in the bid documents beforehand.

provisions	
<p><b>Unwarranted negotiations:</b> negotiations are called without justification. Sometimes a counter-offer is made to discourage lowest acceptable bidder.</p>	<p>Normally, there should be no post-tender negotiations. In certain exceptional situations, for example, procurement of proprietary items, items with limited sources of supply, and items where there is suspicion of a cartel formation, negotiations may be held with L-1. In case of L-1 backing out, there should be re-tendering.</p>
<p><b>Unwarranted delays in finalizing or varying the terms of preannounce contract agreement:</b> even after the TC recommendations are accepted, signing of the contract is delayed on one pretext or the other. Although there is a standard contract form in the bid documents, the contract may be drafted in a fashion to favour or discourage the successful bidder.</p>	<p><b>A target timeline of</b> finalisation of procurement should be laid down. Delays and reasons thereof should be brought out before the CA on the file at the time of TC's acceptance or contract signing. The contract should be strictly as per the bid conditions and accepted offer.</p>
<p><b>Anti-competitive practices:</b> Bidders, that would otherwise be expected to compete, secretly conspire to frustrate the buyer's attempts to get VfM in a bidding process. Anti-competitive conspiracies can take many forms. Sometimes the officers involved in procurement may be part of such collusion.</p> <p><b>Bid coordination:</b> The bidders collude to the quote same or similar rates that are much higher than the reasonable price to force the buyer to settle the procurement at exorbitant prices.</p> <p><b>Cover bidding:</b> Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger.</p> <p><b>Bid suppression:</b> Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid-rigger.</p> <p><b>Bid rotation:</b> In bid-rotation schemes, conspiring firms continue to bid but they agree to take turns being the winning (i.e., lowest qualifying) bidder in a group of tenders of a similar nature.</p> <p><b>Market allocation:</b> Competitors carve up the market and agree not to give competitive bids for certain customers or in certain geographic areas.</p>	<p>These strategies, in turn, may result in patterns that procurement officials can detect and steps can be taken to thwart such attempts. Such anti-competitive activities come under the purview of the competition law, where there is provision of stringent penalties. Regular training should be held for officers involved in procurement to detect and mitigate such practices and also use of the competition law against such bidders.</p>

## **Chapter 8: Rate Contract and other Procurements with special features**

### **8.1 Rate Contracts**

8.1.1 Definition: A Rate Contract (commonly known as RC) is an agreement between the purchaser and the supplier for supply of specified goods (and allied services, if any) at specified price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. No quantity is mentioned nor is any minimum drawal guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/or the purchaser are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other giving 15 days time. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during the validity period of the rate contract, that supply order becomes a valid and binding contract. In view of Government e Marketplace coming into operation, Rate Contract will be applicable for specialized and engineering items. Rate Contract is not required to be executed for common use items like computers, printers, photocopiers, paper and stationary, other office items like furniture, bottled water etc., which are being placed on GeM.

8.1.2 Merits of Rate Contract-The Rate Contract system provides various benefits to both the Purchaser (i.e. user) and the Supplier and the same are indicated below:

#### **8.1.2.1 Benefit to Users**

- a) Competitive and economical price due to aggregation of demands.
- b) Saves time, efforts, man-hours and related costs involved in time consuming as well as repetitive tendering process. It thus reduces lead time for procurement.
- c) Availability of quality goods with full quality assurance back-up.
- d) Enables procurement as and when required and thus reduces inventory carrying cost.
- e) Advantageous even to small users and those located in remote areas.
- f) Provides one single point of contact to procure such items.

#### **8.1.2.2 Benefit to Suppliers:**

- a) Reduces marketing cost and efforts.

- b) Eliminates repetitive tendering and follow-up actions with multiple authorities.
- c) Provides single point contact for Govt. supplies.
- d) Aggregation of Govt. demand leads to economic production.
- e) Lends credibility.
- f) Promotes quality discipline.

8.1.3 Rate Contracts concluded by Central Purchase Organization (e.g. DGS&D) - The Central Purchase Organization (e.g. DGS&D) shall conclude rate contracts after inviting online tenders. The Central Purchase Organization (e.g. DGS&D) shall conclude rate contracts with registered suppliers for specialized items with eligible suppliers obtaining registry as registration or the suppliers having green channel status or BIS licences for the items, in addition to meeting the other requirements specified in the tender enquiry. The rate contract shall be concluded for specialized and engineering goods required by the Govt. indentors/ users including Central Govt., Union Territories, State Govts., Autonomous Organizations, PSUs, Municipalities and Corporations which are the Direct Demanding Officers (DDOs). The Central Purchase Organization will furnish and update all the relevant details of the rate contracts on its web site. The DDO should operate the rate contracts concluded by Central Purchase Organization (e.g. DGS&D) to the maximum extent possible, by placing online supply orders. The placement of offline orders should be avoided. However, in case a Ministry/Department directly procures Central Purchase Organization's (e.g. DGS&D's) rate contracted goods or services from the suppliers, the prices to be paid for such goods or services shall not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase should be in line with those specified in the rate contract. The Ministry/ Department may make its own arrangement for inspection and testing of such goods or services, wherever required. The Central Purchase Organization (e.g. DGS&D) should post the descriptions, specifications, prices and other salient details of the entire rate contracted goods or services, appropriately updated, on its web site for use by the procuring Ministries/Departments.

8.1.4 The goods or services for which Rate Contracts are to be concluded by Central Purchase Organization:

- a) Specialized and /or heavy engineering goods required by not more than 2 organizations.
- b) For which prices are likely to be stable or where Rate Contracts could be finalized with provision of price variations to account for fluctuation of market rates of raw materials etc.
- c) For which Rate Contract is convenient to operate and annual drawals are economical, say above Rs. 25 lakh. NB: i) In case of goods or services of low value and which are required by

the users in very small quantities, rate contracts may not be concluded. ii) Rate Contract may not be concluded for the scarce / critical/ perpetually short supply goods or services.

8.1.5 For bringing a new item on rate contract, feedback/ comments will be invited from users/ stakeholders by posting a notice on Central Purchase Organization (e.g. DGS&D) website for a period of 15 days. After receipt of feedback from users/stakeholders, additional details needed, if any, will be collected/ obtained. Thereafter, if the item is considered to be R/C worthy, further discussions will be held with industry/user departments before finalizing specifications, eligibility criteria for award of R/C etc.

8.1.6 Conclusion of Rate Contracts for Automobiles, sophisticated Equipment, Machinery etc. on the basis of discounts on Net Dealer Price. The Central Purchase Organization (e.g. DGS&D) will conclude rate contracts for Automobiles, Machine Tools, Information Technology Products, OEM & Ancillary Spares and similar other such products where the design feature, performance parameters etc. of such products/goods or services differ significantly among the products of different manufacturers and even between different models of the same manufacturer and where equitable comparison of prices of such products or services is not feasible. Such Rate Contracts are to be concluded on discount on Net Dealer Price (NDP) or MRP basis, generally known as Catalogue basis.

8.1.7 Period of Rate Contract: The period of a Rate Contract should normally be one year for stable technology products. However, in special cases, shorter or longer period not more than two years may be considered. As far as possible, validity period of rate contracts should be fixed in such a way as to ensure that budgetary levies would not affect the price and thereby frustrate the contracts. Attempts should also be made to suitably stagger the period of rate contracts throughout the year.

8.1.8 Criteria for award of Rate Contract:

- (a) The Rate Contracts shall be awarded after inviting online tenders.
- (b) The Rate Contracts shall be awarded to the suppliers registered for broad category of items/products or services with eligible suppliers obtaining registry as registration or the suppliers having green channel status or BIS licences for the tendered items and fulfil the laid down eligibility and qualification criteria including availability of ISI mark, etc. Suitable stipulations are to be incorporated in the tender enquiry documents to this effect. In respect of new items being brought on rate contract for the first time where there is no registered supplier (for the subject items), the requirement of registration can be relaxed with the approval of competent authority. The award of such rate contracts will, however, be subject to the suppliers' satisfactory technical and financial capability.

c) Some of the tenderers (who are otherwise registered) may also be holding current rate contracts and/or held past rate contracts for the required goods. Their performance against such earlier/current rate contracts shall be critically reviewed before they are considered for award of new rate contracts. Specific performance and achievement criteria as on a selected cut-off date is to be evolved for this purpose and incorporated in the tender enquiry document. The tenderers will be asked to furnish the relevant details (along with their tenders) to enable the purchaser to judge their performance and achievement against the past/current rate contracts. These criteria are to be evolved and decided by the purchase organization during procurement planning stage for incorporation in the corresponding tender enquiry documents.

**8.1.9 Special Conditions applicable for Rate Contract-** Some conditions of rate contract differ from the usual conditions applicable for ad hoc contracts. Some such important special conditions of rate contract are given below:

- i) Earnest Money Deposit (EMD) is to be furnished by unregistered bidders only. The amount of EMD should be fixed by the purchase organizations concerned.
- ii) In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawl is mentioned without any commitment.
- iii) The purchaser reserves the right to conclude one or more than one rate contract for the same item.
- iv) The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally fifteen days.
- v) The purchaser has the option to renegotiate the price with the rate contract holders.
- vi) In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.
- vii) Usually, the terms of delivery in rate contracts are free delivery at consignee's site. This is so, because the rate contracts concluded by Central Purchase Organization (e.g. DGS&D) are to take care of the users spread all over the country.
- viii) Online supply orders, incorporating definite quantity of goods to be supplied along with all other required conditions following the rate contract terms, are to be issued for obtaining supplies through the rate contract.
- ix) The purchaser and the authorized users of the rate contract are entitled to place online supply orders up to the last day of the validity of the rate contract and, though supplies

against such supply orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms & conditions of the rate contract.

- x) The rate contract will be guided by “Fall Clause” (as described later in this chapter).

**8.1.10 Parallel Rate Contracts:** Since, the rate contracts concluded by Central Purchase organization (e.g. DGS&D) are to take care of the demands of various Departments and Organizations, PSUs, Autonomous Organizations etc. spread all over the country, generally a single supplier does not have enough capacity to cater to the entire demand of an item. Therefore, the rate contracts are concluded with different suppliers for the same item. Such rate contracts are known as Parallel Rate Contracts.

**8.1.11 Conclusion of Rate Contracts including Parallel Rate Contracts- Techniques for conclusion of rate contract** is basically identical to that of ad hoc contract (as discussed in Chapter 7 of the Manual). Identical tender documents may be utilized for conclusion of rate contracts subject to inclusion therein the special terms & conditions as applicable for rate contracts. In the first instance, the rate contract is to be awarded to the lowest responsive tenderer (L1). However, depending on the anticipated demand of the item, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders, etc. it may become necessary to award parallel rate contracts also. Efforts should be made to conclude parallel rate contracts with suppliers located in different parts of the country. For the sake of transparency and to avoid any criticism, all such parallel rate contracts are to be issued simultaneously.

**8.1.12 Price Negotiation/Counter-Offer-** Price Negotiation with the tenderers should be severely discouraged. However, in case the price quoted by the lowest responsive tenderer (L1) is not reasonable and un-acceptable, the price may be negotiated with L1 only and, if it reduces the price to the desired level, rate contract may be concluded with L1. There may be a situation, where parallel rate contracts are needed, though the price of L1 is reasonable. To take care of such situation, special permission has been given to the Directorate General of Supplies & Disposal (DGS&D) to resort to negotiation and counter offering as indicated below: To start with, the rate contract may be awarded to L1 tenderer. Then the price of L1 is to be counter offered to the higher quoting responsive tenderers under intimation to L1 asking them to send their revised tenders in sealed covers/through fax or email or online on e-bidding platform to be opened in public at a specified place, date and time (as per the standard procedure). L1 may be specifically informed that it may, if it so desires, reduce its price and send its revised tender accordingly as above. The tenderers, who accept the counter offered rate or rate lower than that, are to be awarded parallel rate contracts. If L1 lowers its rate in its revised offer, same may also be accepted with effect from

that date and its rate contract amended accordingly. There may also be a situation where parallel rate contracts are necessary, but even the price of the lowest responsive tenderer (L1) is not reasonable. In that case, price negotiation may be conducted with L1 in the first instance. If L1 agrees to bring down the price to the desired level, rate contract may be concluded with it and that price counter offered to other responsive tenderers under intimation to L1 for further action in identical manner as indicated in the above paragraph. If, however, L1 does not agree to reduce its price in the first instance itself, then the price, which has been decided as reasonable may be counter offered to all the higher quoting responsive tenderers (including L1) for further action on above lines. In respect of items where single bid has been received, the same may be re-tendered, i.e. if consequent to invitation of tender/bid only one bid/tender is received or consequent to technical evaluation if only one bid/tender is found eligible, such bid/tender shall be termed as single bid in respect of that item

**8.1.13 Cartel Formation / Pool Rates/Bid rigging/Collusive bidding etc.:** Quoting of pool rates/Cartel formation, bid rigging/collusive bidding is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Competition Commission of India, Registering Authority e.g. DGS&D/DGQA/NSIC etc. should be initiated against such firms, on case to case basis, as decided by the competent authority. Ministries/Departments may also bring such unhealthy practice to the notice of the concerned trade associations like FICCI, ASOCHAM, NSIC, etc. requesting them, inter alia, to take suitable strong actions against such firms. The Ministries/Departments may also encourage new firms to get themselves registered to break the monopolistic attitude of the firms giving pool rate/ forming cartel. Purchaser may also debar the tenderers indulging in cartel formation/collusive bidding/bid rigging for a period of two years from participation in the tenders of the Purchaser.

**8.1.14 Fall Clause:** Fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods or services following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 07 (seven) days time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and

further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned in the preceding paragraph. It is however, very much necessary that the purchase organizations keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performances are not up to the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them, debarring them for two years from participating against the tender enquiry floated by concerned purchase organization etc.

The provisions of fall clause will however not apply to the following:

- a) Export/Deemed Export by the supplier
- b) Sale of goods or services as original equipment prices lower than the price charged for normal replacement.
- c) Sale of goods such as drugs, which have expiry date.
- d) Sale of goods or services at lower price on or after the date of completion of sale/placement of order of goods or services by the authority concerned, under the existing or previous Rate Contracts as also under any previous contracts entered into with the Central or State Government Departments including new undertakings (excluding joint sector companies and or private parties) and bodies.

8.1.15 Performance Security: Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, the Central Purchase Organization (e.g. DGS&D) / user department shall consider obtaining Performance Security @ 5% of the value of supply order in the supply orders issued against rate contracts on the rate contract holder.

8.1.16. Renewal of Rate Contracts: It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions etc. for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms, who do not agree to such extension, are to be left out. Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower.

8.1.17 Placement of online Supply Orders: Supplies are to be obtained against a rate contract by placing on the rate contracted firm online supply order containing the quantity of the goods to be supplied and incorporating the prices and other relevant terms and conditions of the rate contract.

The officials placing such online supply orders should be duly competent and authorized to do so. An online supply order should generally contain the following important details:

- (a) Rate Contract No. and date.
- (b) Quantity. (Where there is more than one consignee, the quantity to be despatched to each consignee is to be indicated).
- (c) Price.
- (d) Date of Delivery by which supplies are required. (In the supply order, a definite delivery date based on the delivery period stipulated in the rate contract is to be provided).
- (e) Full address of the purchase organization along with telephone No., Fax No. and E. mail address.
- (f) Complete and correct designation and full postal address of the consignee(s)/goods receiving officer(s) along with telephone No., Fax No. and E-mail address.
- (g) Nearest Railway Siding (NRS) of the consignee(s), if applicable.
- (h) Despatch instructions
- (i) Designation and address of the inspecting officer, if any.
- (j) Designation and address of the paying authority to which the bills are to be raised by the supplier Copies of supply order are to be endorsed to all concerned. Model format of Supply Order is available with DGS&D. The same may be obtained from them when needed.

## **8.2 Handling Procurement in urgencies/ Emergencies and Disaster Management**

There are sufficient fast track procurement modalities to tackle procurements in urgent/ emergent and Disaster Management situations. Delegations of procurement powers in SoPP may be considered to handle such situations. Use of following modes of procurements may be utilised in order of speed (under Disaster Management situations, threshold limits of modes of procurement may be increased for higher level of officers, with the sanction of Secretary of the Department):

- a) Direct Procurement Without Quotation
- b) Direct Procurement by Purchase Committee
- c) Direct Procurement by Spot Purchase Committee
- d) Limited/ Single Tender Enquiry, with reduced time for submission of Bids

To speed up procurement, advance cash may be drawn for direct procurement modes and made available to the Committees/ officer, with accounts and vouchers to be submitted after purchase.

### **8.3 Buy Back Offer**

When it is decided to replace an existing old item(s) with a new/better version, the department may trade the existing old item while purchasing the new one by issuing suitable bidding documents for this purpose. The condition of the old item, its location and the mode of its handing over to the successful bidder are also to be incorporated in the bidding document. Further, the bidder should be asked to quote the prices for the item (to be offered by them) with rebate for the old item and also, without any rebate (in case they do not want to lift the old item). This will enable the department either to trade or not to trade the old item while purchasing the new one.

### **8.4 Capital Goods/ Equipment (Machinery and Plant – M&P)**

Capital goods are Machinery and Plant (M&P) which create new Fixed Assets/ utility/ functionality or benefit to the organisation and has a long useful life. Special features of procurement of Capital Goods are:

- a) Since the cost is generally high, there are detailed procedures for approval of technical, administrative and budgetary provisions – before an indent is generated. Unlike consumable items (which are procured if a non-specific budgetary provision is there), Capital Goods are procured after an item specific Budgetary provision is included in the budget. Thus the acquisition of Capital Goods is also an Investment decision and may require some form of Investment Justification. Some of the higher value Capital Goods may be accounted in the Capital Block of the Organization. However these features may not apply to Capital goods procurement of smaller threshold values.
- b) There are also alternative to outright purchasing/ owning such equipment like hiring/ hire-purchase/ leasing or acquiring the functionality as a service.
- c) The procurement involves elements of Works and Services like Installation, Commissioning, Training, prolonged trials, Warranty, After Sales Services like post-warranty Maintenance and assured availability of spares. All such elements have costs may be quoted explicitly or implicitly. A suitable warrantee clause should indicate the period of warrantee and service levels as well as penalties for delays in restoration of defects. Clauses for including essential initial spares for 2 years' maintenance to be supplied along with equipment may be provided. If necessary appropriate number of years' (say three to five or more years depending on the lifespan of the equipment) AMC may be included in the procurement detailing its conditions.

- d) The cost of operations, maintenance and disposal of the equipment over its life cycle may far outweigh the initial procurement cost over the life cycle of the capital equipment. Hence value for money becomes an important consideration – which can be addressed in Public Procurement by way of appropriate Description, specification, Contract conditions like inclusion of cost of supply of initial essential spares and Annual Maintenance Contracts (AMC) for specified number of years within the evaluation criteria of procurement contract.
- e) In case the Plant and Equipment consists of a number of machines which work in tandem or if it includes services/ works to be done by third party, an all encompassing Turnkey contract may be better alternative.
- f) Because of complexity of specification evaluation of Technical suitability of offers in procurement of Capital Goods involves complex issues about acceptance of alternatives, deviations and compliance with various particulars of specification. Acceptance or otherwise of alternatives should be made explicit. A statement of deviation including detailed justification for the deviations from each clause of specification should be made. A schedule of Guaranteed Particulars of specification indicating the values of each parameter may be included in the Specification, where the bidder can quote the offered value of the Parameters. In complex cases Pre-bid conference may help in reducing disputes and complexity at the time of evaluation.
- g) Past experience, Capacity and Financial strength of a supplier is an important determinant of quality, after sales support of the Capital Goods; such procurements are a fit case for Pre-Qualification bidding.

## 8.5 Turnkey Contract

- 8.5.1 In the context of procurement of goods, a turnkey contract may include the manufacture, supply, assembly, installation/ commissioning of equipment (or a group of plant and machines working in tandem – even though some of the machines may not be manufactured by the supplier himself) and some incidental works or services. Generally, in the tender enquiry documents for a turnkey contract, the purchase organization specifies the performance and output required from the plant proposed to be set up and broadly outlines the various parameters it visualizes for the desired plant. The inputs and other facilities, which the purchase organization will provide to the contractor, are also indicated in the tender enquiry document. The contractor is to design the plant and quote accordingly. The responsibility of the contractor will include supplying the required goods, machinery, equipment etc. needed for the plant; assembling, installing and erecting the same at site as needed; commissioning the plant to meet the required output etc., as specified in the tender enquiry documents.

## 8.6 Annual Maintenance Contract

8.6.1 Some goods, especially sophisticated equipment and machinery need proper maintenance for trouble-free service. For this purpose, the purchase organisation may enter into a maintenance contract. It must, however, be kept in mind that maintenance contract is to start after the expiry of the warranty period, during which period the goods are to be maintained free of cost by the supplier.

8.6.2 The maintenance contract may be entered into either with the manufacturer/supplier of the goods or with a competent and eligible firm, not necessarily the manufacturer/supplier of the goods in question. The purchase organisation should decide this aspect on case to case basis on merit.

8.6.3 If the maintenance contract is to be entered into with the supplier of the goods, then suitable clauses for this purpose are to be incorporated in the tender enquiry document itself and while evaluating the offers, the cost component towards maintenance of the goods for specified number of years is also to be added in the evaluated tender value on overall basis to decide the inter se ranking of the responsive tenderers. Equipment with a lower quoted price may carry a higher maintenance liability. Therefore, the total cost on purchase and maintenance of the equipment over the period of the maintenance contract should be assessed to consider its suitability for purchase. While evaluating the tenderers for maintenance of goods covering a longer period (say, three to five or more years depending on the life-span of the equipment), the quoted prices pertaining to maintenance in future years are to be discounted to the net present value as appropriate for comparing the tenders on an equitable basis and deciding the lowest evaluated responsive tender.

8.6.4 However, if the maintenance contract is to be entered into with a competent and eligible supplier separately, then a separate tender enquiry is to be floated for this purpose and tenders evaluated and ranked accordingly for placement of the maintenance contract. Here, the supplier of the goods may also quote and his quotation, if received, is to be considered along with other quotations received.

8.6.5 The details of the services required for maintenance of the goods, the required period of maintenance and other relevant terms and conditions, including payment terms, are to be incorporated in the tender enquiry document. The terms of payment for the maintenance service will depend on the nature of the goods to be maintained as well as the nature of the services desired. Generally, payment for maintenance is made on a half-yearly or quarterly basis.

8.6.6 A Service Level Agreement (SLA) may be incorporated in complex and large maintenance contracts. SLA should indicate guaranteed levels of service parameters like - %age uptime to be

ensured; Performance output levels to be ensured from the equipment; channel of registering service request; response time for resolving the request, Channel for escalation of service request in case of delay or unsatisfactory resolution of request, monitoring of Service Levels etc. The maintenance contract may also include penalties (liquidated Damages) for unacceptable delays in responses and degradation in performance output of machines, including provisions for terminations.

8.6.7 It should be indicated in the bid documents, whether the maintenance charges would be inclusive of visiting charges, price of spares (many times, consumables such as rubber gasket, bulbs, and so on, are not included, even though major parts may be included), price of consumables (fuel, lubricants, cartridges, and so on). If costs of spares are to be borne by the procuring entity, then a guaranteed price list should be asked for along with the bids. It should also be clarified, whether room/space, electricity, water connection, and so on, would be provided free of cost to the contractor. The bidding document should also lay down a service level agreement to ensure proper service during the maintenance period. This would include provision of help lines, complaint registration and escalation procedures, response time, percentage of uptime and availability of equipment, non-degradation in performance levels after maintenance, maintenance of an inventory of common spares, use of genuine spares, and so on.

8.6.8 A suitable provision should be incorporated in the tender enquiry document and in the resultant maintenance contract indicating that the prices charged by the maintenance contractor should not exceed the prevailing rates charged by him from others for similar services. While claiming payment, the contractor is also to give a certificate to this effect in his bill.

8.6.9 If the goods to be maintained are sophisticated and costly, the tender enquiry document should also have a provision for obtaining performance security. The amount of performance security will depend on the nature of the goods, period of maintenance, and so on. It generally varies from 2.5 to 5 per cent of the value of the equipment to be maintained.

8.6.10 Sometimes, the maintenance contractor may have to take the goods or some components of the goods to his factory for repair, and so on. On such occasions, before handing over the goods or components, valuing more than Rs 1 Lakh, a suitable bank guarantee is to be obtained from the firm to safeguard the purchaser's interest.

8.6.11 Sometimes, during the tenure of a maintenance contract, especially with a longer tenure, it may become necessary for the purchase organisation to withdraw the maintenance contract due to some unforeseen reasons. To take care of this, there should be a suitable provision in the tender document and in the resultant contract. Depending on the cost and nature of the goods

to be maintained, a suitable notice period (say one to three months) for such cancellation to come into effect is to be provided in the documents. A model clause to this effect is provided below:

*"The purchaser reserves its right to terminate the maintenance contract at any time after giving due notice without assigning any reason. The contractor will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the contractor for maintenance services already performed in terms of the contract, these would be paid to it/him as per the contract terms".*

# **Chapter 9: Contract Management**

## **9.1 Contract Management**

### **9.1.1 The Purpose of Contract Management**

The purpose of contract management is to ensure that the contract delivers the desired outcomes as per the terms and conditions of the contract. It also ensures that the payments made to the contractor match the performance. Implementation of the contract should be strictly monitored and notices issued promptly whenever a breach of provisions occurs. Monitoring should ensure that contractor adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that “we get what we pay and contract for and pay for only for what we get”. Normally, the following issues are handled during this phase:

- (i) Amendments to the contract;
- (ii) Operation of the option clause;
- (iii) Safeguards for handing over Procuring Entity materials/equipment to contractors;
- (iv) Payments to the contractor and handling of securities;
- (v) Monitoring of supplier performance;
- (vi) Delays in performance of the contract;
- (vii) Breach of contract, remedies and termination of contract;
- (viii) Dispute resolution;
- (ix) Contract closure upon completion;
- (x) Goods receiving;
- (xi) Quality assurance;
- (xii) Accountal and payment of bills; and
- (xiii) Storage and issue of inspected goods.

### **9.1.2 Costs of delay in Contract Management Decisions: Delays**

Payments and decisions in contract management requested by the suppliers should be made within a reasonable time. An atmosphere of lackadaisical dilatory functioning in such matters is liable to lead to bidders quoting higher prices in future bids, besides delays in supplies and disputes in the contract.

## **9.2 Amendment to the Contract**

Once a contract has been concluded, the terms and conditions thereof should not be varied. No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor. However, due to various reasons, changes and modifications are needed in the contract. Where it becomes necessary/ inescapable, any modification will be carried out with the prior approval of the CA with the Associated/ integrated Finance's concurrence.

Requests for such changes and modifications mostly emanate from the supplier. Any amendment to the contract may have, *inter alia*, financial/technical/legal implications. The indenter may be consulted regarding the technical implications. Financial concurrence should be obtained before issuing any amendment that has financial implications/repercussions. Further, if considered necessary, legal opinion may also be sought.

An amendment can concern any of the clauses of the contract but, in supply contracts, amendments often relate to the following:

- 1) Increase or decrease in the quantity required, exercise of quantity option clause;
- 2) Changes in schedule of deliveries and terms of delivery;
- 3) Changes in inspection arrangements;
- 4) Changes in terms of payments and statutory levies; and
- 5) Change due to any other situation not anticipated.

No change in the price quoted shall be permitted after the purchase order has been issued, except on account of price variation, ERV and statutory variations.

## **9.3 Operation of Option Clause**

### **9.3.1 Option Clause**

Under this clause, the purchaser retains the right to place orders for an additional quantity up to a percentage of the originally contracted quantity at the same rate and terms of the contract. This

clause and percentage should be part of the Bid Document and the contract and ideally should not exceed 25-30%. Approval should be taken from the CA (who originally approved the tender decision) to exercise the option clause based on the value of the contract with the increased quantity. In case the recalculated value of the contract goes beyond the delegation of powers of the original CA, approval of the CA for the enhanced value may be taken.

Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above Rs. 50 lakh should invariably include this clause. However, the CA may approve the inclusion of such a clause in lower denomination tenders if such items have a history of frequent disruptions in continuity of supplies. The clause may be framed along following lines:

*"The purchaser reserves the right to increase/decrease the ordered quantity by up to [25] per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period)."*

### **9.3.2        Conditions Governing Operation of Option Clause**

Additional demands should be available for coverage and over-provisioning may be avoided by keeping the officers concerned with provisioning/tender evaluation for the next cycle of procurement informed. The following points must be kept in mind while operating the option clause:

- 1) In case of decrease in the ordered quantity, it would be fair to allow the firm to supply work-in-progress or goods already put up for inspection;
- 2) There should be no declining trend in the price of the stores as evidenced from the fact that no order has since been placed at lower rates and no tender has been opened since the time offers have been received at lower rates – even if not finalised;
- 3) If the option clause exists, during provisioning of the next cycle and during tender evaluation in the next cycle of procurement, application of the option clause must be positively taken into account. The contract management authority must also keep a watch on delivery against contract, if other conditions are satisfied, the option clause must be exercised;
- 4) The option clause is normally exercised after receipt of 50 per cent quantity but if the delivery period is going to expire and other conditions are fulfilled, it can be exercised even earlier;
- 5) The option clause shall be exercised during the currency of the contract such that the contractor has reasonable time/notice for executing such an increase and can be exercised even if the original ordered quantity is completed before the original last date

of delivery. If not already agreed upon, the delivery period shall be fixed for the additional quantity on the lines of the delivery period in the original order. This will satisfy the requirement of giving reasonable notice to the supplier to exercise the option clause;

- 6) The quantum of the option clause will be excluded from the value of tenders for the purpose of determining the level of CA in the original tender;
- 7) There should be no option clause in development orders;
- 8) This provision can also be exercised in case of PAC/single supplier OEM cases; and
- 9) However, where parallel contracts on multiple suppliers are available, care should be taken in exercising the option clause, so that the original tender decision of splitting quantities and differential pricing is not upset or vitiated. Other things being equal, the supplier with the lower rate should first be considered for the option quantity.

#### **9.4 Safeguards for Handing over Procuring Entity Materials/Equipment to Contractors**

For performance of certain contracts, Procuring Entity may have to loan stores, drawings, documents, equipment and assets (such as accommodation, identity cards and gate passes, and so on) to the contractor. In certain situations, the contractor may also be supplied electricity, water, cranes, and weighing facilities on payment/hire basis. As a measure of transparency, the possibility of provision of such resources by Procuring Entity should have been announced in the tender document or at least requested by the contractor in the tender and written in the contract.

Whenever stores or prototypes or sub-assemblies are required to be issued to the firm/contractor for guidance in fabrication, these should be issued against an appropriate bank guarantee. In addition to the bank guarantee, appropriate insurance may be asked for if it is considered necessary. Before the final payment or release of PBG/SD, a certificate may be taken from the concerned department that the contractor has returned all documents, drawings, protective gear, material, equipment, facilities and assets loaned, including all ID cards and gate passes, and so on, in good condition. Further, it should be certified that payment from the contractor has been received for usage of electricity, water, crane, accommodation, weighing facility, and so on. For low value items of less than Rs. 1,00,000, or for sending spares for repairs to the OEMs, this stipulation of the bank guarantee may be waived and, if feasible, an indemnity bond may be taken.

## 9.5 Payments to the Contractor and Handling of Securities

It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions. Before the payment is made, the invoice should be cross-checked with the actual receipt of material to ensure that the payment matches the actual performance.

Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed. Chapter 6 has more details in this regard. Before making a final payment or before releasing the performance bank guarantee, a 'No Claim Certificate' (Annexure 21) may be insisted upon from the supplier to prevent future claims. Whenever a bank guarantee is released following due procedure and safeguards, acknowledgement thereof should also be taken from the contractor.

## 9.6 Monitoring of Supplier Performance

As soon as the order is issued, entry shall be made in the progress of supply order register (Annexure 17) recording therein the name of the supplier, items, rate, quantity, amount, delivery schedule, and so on. Monitoring should ensure that suppliers adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, and adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that the buyer has received what was contracted. A sound system for monitoring the performance of the suppliers in a contract would also be useful in selecting a good supplier in future procurement of the same or similar materials. Purchase order-wise data will be maintained in this register regarding execution by and performance of the supplier. The register shall form the basis for the Management Information System report on unexecuted purchase orders beyond scheduled deliveries, reports on performance of suppliers, and so on.

## 9.7 Delays in Performance of Contract

### 9.7.1 *Delivery Period*

The period for delivery of the ordered goods and completion of any allied service(s) thereof (such as installation and commissioning of the equipment, operators' training, and so on) are to be properly specified in the contract with definite dates and these shall be deemed to be the essence of the contract. The delivery period stipulated in contracts should be specific and practical. Vague and ambiguous terms such as 1,000/ 5,000 numbers per month, two to 16 weeks from the date of

receipt of order, 'immediate', 'ex-stock', 'as early as possible', 'off the shelf', 'approximately' and the like should be scrupulously avoided as these will not be legally binding.

In case of items such as raw material which is delivered throughout the year, a delivery schedule of the monthly rate of supply should be specified. It is usual in such cases that there is a slight deviation from such monthly rate of supply. It should be clarified in such cases that the variation in the periodic rate of supply beyond +/- 10 per cent in any calendar month; or +/- 7 per cent cumulative in any calendar quarter; or +/- 5 per cent cumulative in any calendar year would be considered as delay in delivery attracting imposition of LD.

Unless otherwise agreed, the buyer of goods is not bound to accept the delivery thereof in instalments.

### ***9.7.2 Terms of Delivery***

Terms of delivery (FOR, FOB, CIF, and CFR, and so on), *inter alia*, determine the delivery point of the ordered goods from where the purchaser is to receive/collect the goods. It also decides the legally important issue of when the 'titles of the goods' have passed to the purchaser. The delivery period is to be read in conjunction with the terms of delivery, therefore the delivery is taken to have been made at the time when goods reach the delivery point as per the delivery terms. Chapter 6 has more details in this regard.

### ***9.7.3 Severable and Entire Delivery Contracts***

Such contracts, where instalments are not specified or not intended, are known as entire contracts. In such cases, even non-delivery of a part quantity can lead to a breach of contract. However, a variation of 5 per cent of the contract quantity is usually exempted in the contract conditions. In the case of an entire contract, even if providing a delivery schedule, it is not necessary to grant an extension in the delivery period in the case of delay in intermediate instalments. Such extension would be necessary only in case of a delay beyond the final date for the completion of the delivery.

Contracts with clearly laid out instalment deliveries mentioning the exact dates and where each instalment is paid for separately are known as severable contracts. In effect, each of such instalments is a separate independent contract by itself. In severable contracts, delay or breach of one instalment does not affect other instalments, since each instalment is considered as a separate contract. In the case of severable contracts, extension in the delivery period is necessary for each instalment separately.

The legal position, however, is not very straightforward, since the mere mention of monthly/quarterly rate of delivery, called delivery schedule, is not sufficient to make it a severable contract. However, instalments specifying exact dates, that is, 310 numbers by June 20, 2016 would be amounting to a severable contract.

The delivery cannot be re-fixed to make a contract a 'severable' contract without the specific agreement of the supplier, if the delivery originally stipulated in the contract was in the form of an 'entire' contract.

#### **9.7.4 Extension of Delivery**

Suppliers shall be required to adhere to the delivery schedule specified in the purchase order and, if there is delay in supplies, LD shall be levied wherever there is failure by the party. Extension of the delivery date amounts to amendment of the contract. Such an extension can be only done with the consent of both parties (that is, the purchaser and supplier). No extension of the delivery date is to be granted *suo motu* unless the supplier specifically asks for it. However, in a few cases, it may be necessary to grant an extension of the delivery period *suo motu* in the interest of the administration. In such cases, it is legally necessary to obtain clear acceptance of the extension letter from the supplier.

No correspondence should be entered into with the supplier after expiry of the contract delivery period or towards the end of it, which has the legal effect of condoning the delay/breach of contract. When it is necessary to obtain certain information regarding past supplies, it should be made clear that calling for such information is not intended to keep the contract alive and that it does not waive the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. The last line of such a communication should therefore be: "*This letter is issued without any prejudice to Procuring Entity's rights and remedies under the terms and conditions of the subject contract and without any commitment or obligation.*"

If at any time during the currency of the contract, the supplier encounters conditions hindering timely delivery of goods, he shall promptly inform the concerned officer in writing. He should mention its likely duration and make a request for extension of the schedule accordingly. On receiving the supplier's communication, the procuring entity shall examine the proposal (refer to Annexure 18) and, on approval from the CA, may agree to extend the delivery schedule, with or without LD and with or without the denial clause (as defined in Para 9.7.8 above), for completion of the contractor's contractual obligations, provided:

- 1) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery; and
- 2) That there is no falling trend in prices for this item as evidenced from the fact that, in the intervening period, neither orders have been placed at rates lower than this contract nor any tender been opened where such rates have been received even though the tender is not yet decided. In cases of certain raw material supplies, where prices are linked to the PVC, extension may be granted even in case of a falling trend in price indices, since the purchaser's interests are protected by the price variation mechanism. However, in such cases it should be ensured that extensions are done with the denial clause.

When it is decided to extend the delivery period subject to recovery of LD for delay in supplies, contractors must be given a warning to this effect in writing at the time of granting extensions. It is not correct to grant extensions without any mention of the LD if it is proposed to recover such charges eventually. It is also not correct to grant an extension of the delivery period by merely stating that the extension is granted "without prejudice to the rights of the purchaser under the terms and conditions of the contract" as this would mean that all the options given in the conditions of the contract would be available to the purchaser on expiry of the extended delivery period and would not amount to exercise of the option to recover LD. To take care of complex legalities brought out above, extension of the delivery period when granted should only be done in writing in the laid down format given in Annexure 19.

#### **9.7.5 *Delay in Supplies for which Supplier is not Responsible***

Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to take care of the lost period, without imposing any penalty to the supplier:

- i) Cases where the manufacture of stores is dependent on the approval of the advance sample and delay occurs in approving the sample though submitted by the supplier in time;
- ii) Where extension in the delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier; and
- iii) Cases where the purchaser controls the entire production.

#### **9.7.6 *Performance Notice***

A situation may arise where the supply/services has not been completed within the stipulated period due to negligence/fault of the supplier; however, the supplier has not made any request for

extension of the delivery period but the contracted goods/services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the supplier by suitably extending the delivery date and by imposing LD with denial clauses, and so on, along identical lines as in para above. The supplier's acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above. The text of the performance notice will be on similar lines to the Annexure 19.

#### **9.7.7 *Force Majeure Clause***

A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 days, either party may at its option terminate the contract without any financial repercussion on either side.

Notwithstanding the punitive provisions contained in the contract for delay or breach of contract, the supplier would not be liable for imposition of any such sanction so long as the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event covered in the FM clause.

#### **9.7.8 *Denial Clause***

Since delay in delivery is a default by the seller, the buyer should protect himself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter informing the supplier of extension of the delivery period. In the denial clause, any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the seller during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties,

PVC and foreign exchange rate. Thus, PVC, other variations and foreign exchange clauses operate only during the original delivery period. The format of the denial clause is available in Annexure19.

### **9.7.9 *Liquidated Damages***

Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as LD. Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply [Malla Baux Vs. UOI (1970)].

### **9.7.10 *Quantum of LD***

While granting extension of the delivery period, where the delivery of stores or any instalment thereof is accepted after expiry of the original delivery period, the CA may recover from the contractor, as agreed, the LD a sum equivalent to 0.5 per cent of the prices of any portion of stores delivered late, for each week or part thereof of delay. The total damages shall not exceed 10 per cent of the value of delayed goods. The LD cannot exceed the amount stipulated in the contract [NC Sanyal Vs. Calcutta Stock Exchange (1971)].

In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. LDs accrue only in case of delayed supplies. Where or in so far as no supplies have been made under a contract, upon cancellation, recovery of only the loss occasioned thereby can be made, notwithstanding the fact that prior to the cancellation one or more extensions of the delivery period with reservation of the right to LD are granted.

Government establishments/departments, as distinct from PSUs, that execute contract work should not be dealt with as ordinary contractors and not generally be penalised for late delivery and claims for loss on risk-purchase should not be enforced against them. Serious cases of defaults should, however, be brought to the notice of the HOD or the government department concerned.

Relaxations allowed to government establishments/departments, as above, will not apply to PSUs as a matter of course. Each case should be decided on merits and the decision to waive the recovery of LDs or risk purchase expenditure should be taken on merit.

In the case of development/indigenisation contracts, LDs are not levied. However, the nature of such contracts should be declared at the time of placing them.

In case of entire (non-severable) contracts, even where staggered deliveries have been indicated, it may happen that supplies are not received according to the delivery schedule. In such cases, keeping

in mind the fact that the deliveries indicated under the contract are non-severable, no question of LDs or enforcement of risk purchase would arise so long as there has been no delay in the completion of supplies with reference to the total delivery period.

#### **9.7.11 Waiver of LD**

There should normally be no system of waiver of LDs for delayed supplies in supply contracts and it may be strictly be an exception rather than a rule. For an extension of the delivery date with waiver of LD, approval of the CA with consultation of associated Finance may be taken and justifications recorded.

#### **9.7.12 Handling Deliveries after the Expiry of Delivery Period**

As per law, if stores are accepted after expiry of the delivery date of a particular instalment without extension in delivery period having been given, duly reserving our rights to levy LD, it amounts to voluntary abrogation of our legal rights under the contract to claim LDs or other remedies.

If the contractor makes supplies locally after the expiry of delivery period, the supplies may be provisionally retained under a franking clause reserving rights and the contractor may be asked to obtain an extension of the delivery period from an authorised officer with or without any LD/denial clause.

*"Please note that materials have been supplied after the expiry of contracted delivery date and its provisional retention does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. You may apply for an extension of delivery date from the procuring entity. The goods are being retained without prejudice to the rights of the Government of India under the terms and conditions of the contract."*

As regards supplies coming from outside contractors, if the contractor dispatches the stores after expiry of the delivery period, the consignee should, after the receipt of the railway receipt or lorry receipt or goods consignment note or airway bill, send an intimation to the contractor stating that the action taken by him in dispatching the goods after expiry of delivery date is at his own risk and responsibility, and that the consignee is not liable for any demurrage, wharfage and deterioration of goods at the destination station and, in his own interest, the contractor should get an extension of the delivery period from the purchasers. A copy of the communication sent to the contractor should also be sent to the purchaser.

In case of imports, the contractor must not dispatch the consignment after expiry of the delivery period without taking prior extension of the delivery period. In any case, the terms of LC should be

such that if there are dispatches beyond the delivery period, payment should be denied without levy of full LD and without formal extension of the delivery period by the purchaser.

## **9.8 Breach of Contract, Remedies and Termination**

In case the contractor is unable to honour important stipulations of the contract, or gives notice of his intention of not honouring or his inability to honour such a stipulation, a breach of contract is said to have occurred. Mostly, such breaches occur in relation to the performance of the contract in terms of inability to supply the required quantity or quality. It could also be due to breach of ethical standards or any other stipulation that affects Procuring Entity seriously.

The purchaser or its authorised representative is not to enter into correspondence after expiry of the delivery date stipulated in the contract because such a correspondence will keep the contract alive and would amount to abrogation of the purchaser's right and remedies for delays by the contractor. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain information regarding past supplies, and so on, from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract valid and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. A model communication which may be issued by the purchaser to ascertain the supply position after expiry of the delivery period is given at Annexure 20. As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately. The CA may terminate a contract in the following cases.

### ***9.8.1 Cancellation of Contract for Default***

Without prejudice to any other remedy for breach of contract, such as removal from the list of registered supplier, by written notice of default sent to the supplier, the contract may be terminated in whole or in part:

- 1) If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted; and
- 2) If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted.

If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:

- 1) Forfeiture of the performance security;
- 2) Upon such terms and in such manner as it deems appropriate, goods similar to those undelivered may be procured and the supplier shall be liable for all available actions against him in terms of the contract (popularly called risk purchase); and
- 3) However, the supplier shall continue to fulfil the contract to the extent not terminated.

Before cancelling the contract and taking further action, it may be desirable to obtain legal advice.

### ***9.8.2 Termination of Contract for Insolvency***

If the supplier becomes bankrupt or becomes otherwise insolvent or undergoes liquidation or loses substantially the technical or financial capability (based on which he was selected for award of contract), at any time, the contract may be terminated, by giving a written notice to the supplier, without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to Procuring Entity.

### ***9.8.3 Termination of Contract for Convenience***

After placement of the contract, there may be an unforeseen situation compelling Procuring Entity to cancel the contract. In such a case, a suitable notice has to be sent to the supplier for cancellation of the contract, in whole or in part, for its (Procuring Entity's) convenience, *inter alia*, indicating the date with effect from which the termination will become effective. This is not Procuring Entity's legal right—the contractor has to be persuaded to acquiesce. Depending on the merits of the case, the supplier may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be to be incorporated in the tender document as well as in the resultant contract.

## **9.9 Dispute Resolution**

Normally, there should not be any scope for dispute between the purchaser and supplier after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a disagreement between the purchaser and supplier. Therefore, the conditions governing the contract should contain suitable provisions for settlement of such disputes or differences binding on both parties. The mode of settlement of such disputes/differences should be through arbitration. However, when a dispute/difference arises, both the purchaser and supplier should first try to resolve it amicably by mutual consultation. If the parties fail to resolve the dispute within 21 days, then, depending on the position of the case, either the purchaser or supplier should give notice to the other party of its

intention to commence arbitration. When the contract is with a domestic supplier, the applicable arbitration procedure shall be as per the Indian Arbitration and Conciliation Act, 1996. While processing a case for dispute resolution/litigation/arbitration, the procuring entity is to take legal advice, at appropriate stages.

### **9.9.1 Arbitration Clause**

If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act 1996. For this purpose, when the contract is with a domestic supplier, a standard arbitration clause may be included in the SBD indicating the arbitration procedure to be followed. The venue of arbitration should be the place from where the contract has been issued.

### **9.9.2 Foreign Arbitration**

The Arbitration and Conciliation Act 1996 has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.

When the contract is with a foreign supplier, the supplier has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.

The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true especially for large value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or arbitration rules of India, whereby it may be in India or in any neutral country.

## **9.10 Closure of Contract**

While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/final payment. Before the bank guarantee is released a “no claim certificate” may be taken from the contractor as per the format given in Annexure 21. At least in large contracts (above Rs. 25 lakh), it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across departments involved in the execution of the contract:

### ***9.10.1 Materials Reconciliation***

The stores and/or the indenter should confirm that all materials ordered in the contract and paid for have been received in good condition and there is no shortfall. Full reconciliation of all raw material, part, assembly provided to the contractor should be done including wastages and return of scrap/off-cuts.

### ***9.10.2 Reconciliation with the User Department***

Besides material reconciliation, the user department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the department's satisfaction, as per the contract:

- 1) Achievement of performance standards of material/equipment supplied;
- 2) Installation and commissioning;
- 3) Support service during the warranty period which has ended on \_\_\_\_\_;
- 4) Training of operators/maintenance staff;
- 5) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor; and
- 6) Support during annual maintenance contract (if it was part of the contract) which has ended on \_\_\_\_\_.

### ***9.10.3 Payment Reconciliation***

The indenting/materials management departments may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:

- 1) LD;
- 2) Price reduction enforced on account of shortfall in performance of material/equipment;
- 3) Variations/deviations from the scope of the contract;
- 4) Overpayments/duplicate payments, if any;
- 5) Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, cranes and other machinery, and so on,
- 6) Demurrage, insurance premiums or claims, customs duties, and so on;
- 7) Material reconciliation;
- 8) Price and exchange rate variations;
- 9) Statutory duties paid on behalf of the contractor by Procuring Entity; and
- 10) Inspection charges or loss of material in testing.

On satisfactory reconciliation and against a “no claim certificate” from the contractor, the bank guarantee may be released and its acknowledgement taken from the contractor.

On completion of all activities against a contract, the purchase file should be preserved for a period of five years in the record room and then destroyed after expiry of the applicable mandatory retention period with the approval of the CA. However, Procuring Entity, at its discretion, may retain important records for future reference.

## **9.11 Goods Receiving**

### ***9.11.1 Transportation of Goods***

Where critical equipment of high value is involved, suitable special instructions shall be conveyed to the supplier about the mode of transport, loading, avoidance of transhipment and, if necessary, provision of escorts. In case of chemicals, powdery materials, liquid materials, and so on, parties may be advised on proper packaging to avoid spillage en route, so as to avoid pollution problems and also to conform to the ISO 14001 standard. In case transport is arranged by Procuring Entity, suitable instructions may be incorporated in the transportation contract accordingly.

Wherever the items make a full truck load, the suppliers should be advised to dispatch such items in a full truck direct to the consignee on a door delivery basis to the site. In such cases, Procuring Entity shall advise the supplier to send a consignee copy of the lorry receipt to the consignee along with the consignment and the consignment shall be booked to Procuring Entity and not “self”. The supplier shall be specifically asked to dispatch the consignments to the designated consignee. All dispatch documents, that is, railway/lorry receipt, goods consignment note, airway bill, invoices, packing list, freight memos, test certificate, and so on, shall be sent to the Associated/ integrated Finance which will arrange to make the payment. If the payment is to be made through the bank, all original documents are to be sent through the designated bank.

### ***9.11.2 Distribution of Dispatch Documents for Clearance/Receipt of Goods***

The supplier shall send all the relevant dispatch documents well in time to the purchaser to enable the purchaser to clear or receive (as the case may be) the goods in terms of the contract. Necessary instructions for this purpose are to be incorporated in the contract. Within 24 hours of dispatch, the supplier shall notify the purchaser or consignee (others concerned), the complete details of dispatch and also supply the following documents by registered post/ speed post/air mail/courier (or as instructed in the contract).

The supplier should submit five copies of his invoice. The invoices must be pre-stamped and shall indicate the details of the lorry receipt or railway receipt number, as the case may be, and also the details of the packing list and items dispatched. The invoice must also indicate the purchase order number and date, unit rate and net total price; the packing list shall include the total weight of the consignment and items dispatched. All documents are to be duly signed by the supplier's representative. Bank charges towards processing of the bills for payment shall be as per terms and conditions of the purchase order.

### ***9.11.3 Receipt of Consignment***

At the time of the delivery at the stores, the storekeeper should receive the goods on a "subject to inspection" basis and should issue the preliminary receipt after a preliminary inspection as an acknowledgement of having received the claimed quantity (not the quality) of consignment.

#### ***a. Preliminary Inspection on Receipt***

On opening the packages (if applicable), the storekeeper should initiate preliminary inspection of the goods received. This should include checks for any obvious damage in transit and other physical or visual checks specific to the functional characteristics of the product. The quantity of the goods received should also be verified at this stage against the purchase order and the supplier's invoice. When goods are supplied in boxes, bundles or coils as in the case of tools, rope, canvas, barbed wire, and so on, each of which is required to contain a specified quantity, a reasonable number of such packages should be opened up and checked for quantity per package. The quantity received should also be mentioned in the preliminary receipt to be given to the supplier. Any discrepancies in packages or quantity should be mentioned therein.

#### ***b. Detailed Inspection on Receipt***

Before accepting the ordered goods, the storekeeper must ensure that the goods have been manufactured as per the required specifications and are capable of performing the functions as specified in the contract. To achieve this, the tender document and the subsequent contract should include references to standards or specifications that specify the details of inspection and tests to be carried out and stages and manner of carrying out these tests.

The required inspections and tests should be carried out by technically qualified and competent personnel. If the procurement agency does not have such qualified personnel, it may engage competent professionals from other departments or even outside agencies.

## 9.12 Quality Assurance and Inspection

In the context of procurement of goods, the Quality Assurance (QA) process is needed to provide adequate confidence that a procured product will satisfy the laid down standards of quality and serve the purpose for which it is being procured. QA consists of three components:

- 1) Defining quality standards;
- 2) Planning assurance of quality; and
- 3) Measurement of quality.

The description and TS define the quality standards expected from the product.

Planning for QA is done by way of specifying the qualifications criteria for the suppliers to ensure that they do have the technical, infrastructure and financial capabilities to meet the required quality standards. Specifications also lay down quality control requirements to indicate parameters, target values, tolerances and method of measurement of various parameters that constitute the standards of quality. This also involves laying down the type of inspection, agency for inspection.

Measurement of quality is done though a scheme of inspections at the contract management stage and laying down the actual process of inspection.

### 9.12.1 *Inspections – Measuring Quality Standards*

The stages and modes of inspection may vary depending on the nature of the goods, total value of the contract, location of the supplier, location of the user, and so on. Depending on the nature of goods being procured, usually, the following types of inspection may be adopted:

### 9.12.2 *Types of Inspection*

#### (i) **Pre-dispatch Inspection**

A pre-dispatch inspection may be conducted either during various stages of the production process (which is known as stage inspection) or on production of the finished products, but before dispatch of the goods from the supplier's premises. Stage inspection may be used for highly technical goods whose quality of the manufacturing process is likely to have considerable effect on the final quality and durability of the goods. Even after pre-dispatch inspections, these materials should be inspected again on receipt, as a matter of abundant precaution.

Inspection of the materials before dispatch shall be carried out by the inspection agency nominated in the contract or by its representative at the premises of the supplier in accordance with the inspection procedure laid down and incorporated in the purchase order.

The testing charges for samples should be borne by the supplier and this should be made clear at the enquiry stage itself to avoid claims at a later date/or effect on his position in comparative statement of offers. Any special testing involving financial implications shall be settled prior to placement of the order and such cost should form part of the evaluation.

In case of offshore supplies, the inspection clause shall be incorporated in the purchase order wherever required:

- a) Procuring Entity may depute its representative or a third party inspection agency to the supplier's manufacturing premises to carry out/witness inspection and testing, performance testing at its discretion;
- b) Alternatively, Procuring Entity shall retain an option to waive the above and accept the material based on the supplier's internal test report, guarantee and fitment certificate. In this regard, the written approval of the HOD of the Indenting Department should be obtained recording the reasons for it; and
- c) Whenever the inspection is carried out at the supplier's manufacturing premises, an inspection on receipt of goods at Procuring Entity shall also be carried out by an officer of the Indenting Department or a third party inspection agency, as the case may be, on receipt of the goods.

#### **(ii) Inspection of Goods on Receipt at Consignee/User's Site**

Post-delivery inspection is carried out on receipt of goods before accepting them. This should be typically done for goods that are available off-the-shelf and are BIS marked. All final goods that may be directly consumed or utilised on delivery (excluding machinery installations, and so on) and for which detailed inspection of the manufacturing process is not required and only a physical inspection regarding their physical characteristics is required, may be inspected using this method. On receipt of goods at stores, the storekeeper should immediately notify the officer nominated for inspection, requesting to schedule an inspection. The inspecting officer should then fix a date for inspection.

The consignee has the right to reject the goods on receipt during the final inspection on delivery even though the goods have already been inspected and cleared at the pre-dispatch stage by Procuring Entity's inspector. However, such rejection should be strictly within the contractual terms and conditions and no new condition should be adopted while rejecting the goods during final inspection.

Goods accepted by the purchaser at the initial and final inspections, in terms of the contract, shall in no way dilute the purchaser's right to reject them later, if found deficient in terms of the warranty clause of the contract.

In case of rejection of goods at this stage, the material rejection advice/rejection memo should be issued. In case of pre-inspected goods, a joint inspection of the rejected lot of goods should be held with the pre-inspecting agency and firm. In case of failure of the firm to associate with a joint inspection, it should be held with the pre-inspecting agency.

In case of rejection of the pre-inspected supply of goods at the consignee end, the material rejection advice/rejection memo should be sent to all concerned, which is, the firm, purchaser, pre-inspecting agency, paying authority, associate bill paying authority, and so on, without fail. The concerned paying authority as per the contract and associate bill paying authority should note the rejection advice details in its recovery register for effecting recovery of payments made, as the case may be. In case of replacement supply against the rejected lot of goods, the process should remain exactly the same in terms of sequence of pre-inspection/inspection as laid down in the contract, prior to acceptance by the consignee. In case of acceptance of the replacement supply/rejected supply after rectification, the earlier issued material rejection advice/ rejection memo should be withdrawn under advice to all concerned.

### **(iii) Manufacturer's Quality Self-certification**

Reputed manufacturers could be relied upon with respect to certain goods for quality products. These may not be subjected to physical inspection and the materials may be accepted under the firm's quality self-certification. The physical inspection clause stipulating the inspection authority and inspecting officer in such cases should not be included in the contracts entered into. Waiver of pre-dispatch inspection and acceptance of materials under the firm's quality self-certification may be considered where:

- a) The user departments indicate, in their indent, that physical inspection is not necessary and that the materials can be accepted on the firm's quality self-certification;
- b) The user department requests for a waiver of inspection to meet urgent requirement and where the firm is agreeable to 100 per cent payment against the consignee's receipt and acceptance. In such cases, the user departments themselves should be responsible for ensuring the quality of goods supplied;
- c) In case of goods to be imported from abroad, pre-dispatch inspection of goods at the supplier's premises involves considerable expenditure to the purchaser. In such a situation, the purchaser may substitute pre-dispatch inspection by its own inspector with

manufacturer's in-house inspection report and warranty. However, before adopting this procedure, the nature and cost of the goods ordered, the reputation of the supplier, and so on, should also be kept in view and appropriate decision taken. For checking the reputation and background of the supplier, the purchase organisation may also request the Indian embassy located in that country for a report on the technical and financial competence of the firm. Further, trustworthy publications such as Thomas Register, Dun and Brad Street Register, and so on, are also available in the USA and Europe which provide authentic technical and financial data and details of the manufacturing companies located in those countries. Such publications may also be relied upon for this purpose; and

d) However, the right of waiver of inspection may be reserved only for specific requirements. Justification for the waiver should be recorded. Also, a suitable clause may be incorporated in the conditions of contract.

**(iv) Inspection on Installation and Commissioning**

This method is adopted to check the performance and output of equipment or machinery after it is commissioned and operational at site.

**9.12.3 *Types of Inspection Agencies***

Normally, inspection modalities or agencies for inspections specified in the contract should not be changed. In rare cases, when this becomes inescapable, it should be done with the approval of the CA, justifying the rare circumstances, ensuring that no undue benefit accrues to the contractor.

**(i) Internal Inspection Authorities**

Wherever there is technical expertise available in-house, an internal officer of the Indenting Department is nominated for inspection. The consignee should be the final authority for acceptance of goods.

**(ii) External Inspecting Authorities**

In case Procuring Entity does not have technical expertise or for other relevant reasons, inspection may also be entrusted to a third-party inspection authority. The procuring entity, however, retains the right to reject the consignment, even if it is cleared by third party inspection authorities.

Sometimes, it becomes necessary to conduct a type test, acceptance test or special test at external laboratories, when facilities for these tests are not available in-house with the supplier or carrying out of confirmatory tests is considered desirable before accepting the goods. The Procuring Entity should draw up a list of approved laboratories for this purpose, to which the samples drawn from

the lots offered by the supplier can be sent for tests. The list should also contain approved laboratories, which can be used as referral/appellate laboratories for retest, when samples tested at one laboratory are decided to be re-tested. The following guidelines should apply to such cases:

- a) External testing may invariably be done by national accredited or reliable laboratories, preference being given to National Test House (NTH). For testing the samples drawn from the lots offered by the supplier, an inspection agent qualified to conduct random sampling in accordance with ISO requirements should do the selection of samples;
- b) Test reports must contain the values obtained in the tests besides fail/pass results. The laboratory must preserve the sample and test records for a period of three years;
- c) The department should lay down a liability statement for costs expended on tests, dispatch of samples, transportation costs, test charges, and so on., in respect of samples tested at outside laboratories as may be applicable; and
- d) In cases where the samples are to be tested at the supplier's cost because of non-availability of his own testing arrangements, the responsibility of depositing the testing fees would rest with the supplier.
- e) Normally unless otherwise intended in the contract, charges of routine tastings prior to dispatch of materials are to be borne by the supplier and charges of testing of materials after receipt by consignee are to be borne by the procuring agency. Contract should be clear about responsibility of cost of materials expended in tests and charges of special tests e.g. type test or tests at external labs. Even where procuring entity is responsible for testing charges, if the material fails in the test, the charges would become the responsibility of the seller.

**(iii) Joint Inspection on Complaint**

In case a written complaint is received from the supplier disputing the rejection of goods by the Procuring Entity's inspecting officer, it should be jointly investigated by a team consisting of an authorised representative of the Procuring Entity, a senior representative of the inspecting agency who is conversant with the goods and an authorised representative of the supplier.

**9.12.4        *Issue of Inspection Report***

After satisfactory inspection and tests, the acceptable goods shall be stamped, labelled, marked or sealed, in such a way as to make subsequent identification and tally with the inspection report of accepted lots easy for the consignee/user. The following guidelines should be used for inspection reports to be issued:

- a) Each inspecting officer shall be supplied with acceptance stamps, lead seals, pliers, rubber stamps, stencils, labels, stickers, holograms, and so on, according to requirements, for sealing and marking the inspected goods in terms of the contract. He will be responsible for safekeeping of these articles and shall ensure that they are not misused by unauthorised persons. Unserviceable seals, pliers, stamps, stickers, holograms, and so on, shall be returned to the concerned issuing official. The procuring entity shall lay down detailed guidelines covering all these aspects. For reasons of security and to avoid irregular or incorrect issue, inspection notebooks should be machine numbered and, wherever possible, different coloured copies marked for each user. An account of the inspection notes issued with serial number-wise details shall be maintained in an appropriate register. Procuring Entity should also develop a fool proof system to avoid any fraudulent and unauthorised use of the inspection notes;
- b) There should not be any initial provisional acceptance at a lower level. A time limit shall be fixed for the issue of inspection documents. The inspection note shall also indicate the validity period, by which period the supplier must dispatch the accepted goods to the consignee in terms of the contract. The number of copies of the inspection notes and their distribution for different types of inspections will be as prescribed by the procuring entity/indenter department;
- c) Inspection reports should be prepared detailing the inspection done, samples examined, requirements as per the relevant specification/contract and the observations jointly with the representative of the firm. Each inspection note copy issued should invariably bear the individual's name, stamp along with his designation and code number of the officer authorised to sign and issue inspection documents. Facsimiles of the inspection stamps and their position should be put on the inspected material to help identify the inspected goods at the consignee's end. Inspection note copies meant for payments should be attested with full signature in ink by the inspecting officer. The Accounts Department will make payments only against copies so attested, not against any other copy. Corrections, if any, on the inspection note should be duly authenticated by the officer issuing it. Similarly, each continuation sheet, if attached to the inspection note, should be signed by the inspecting officer at the relevant places and any correction duly authenticated;
- d) Departmental instructions should invariably prescribe that paying authorities will keep a record of specimen signatures of authorised inspecting authorities for verification with the signature in the inspection note while authorising payment;

- e) A separate inspection report must be prepared for each consignment. In the case of large consignments, the issue of the inspection report may not be held up until the inspection of the full consignment is completed. These must be issued for lots inspected every day or every two days. If the contract is in terms of 'sets' or 'number' and materials are such that they comprise a number of components or accessories, the inspection report should be issued only when all parts, components and accessories forming a set are inspected and accepted. When plant and equipment are ordered with spares, the inspection report for spares should not be issued before acceptance of the main equipment. In the case of contracts for imported materials that involve initial inspection in the country of origin and final inspection in India, the final inspection note should be issued giving reference of the certificate issued abroad;
- f) In respect of materials which have been rejected by the inspecting officer, the rejection inspection report should be issued immediately following the completion of inspection. In case of total rejections, no copies meant for payments or the accounts office should be issued. All the reasons for rejection and deviations against the governing specifications, drawings or other particulars should invariably be noted in detail in the "remarks" column of the rejection inspection note. The rejected material should be given a yellow paint mark to avoid it being submitted again for inspection or supplied to other customers. Such copies should be cancelled across by the inspecting officer with his signature and retained in the inspection file along with the office copy of the rejection inspection note; and
- g) No 'certified true copy' of the lost original payment copies should be issued until a 'non-payment certificate' has been received from the accounts officer concerned or stating that payment has not been made and should not be made against the original inspection report even if received subsequently. This copy must be endorsed as "certified copy". This endorsement should be attested in full in indelible ink by the officer proving a cross reference to the accounts officer's non-payment certificate with the name stamp with the designation and code number of the officer issuing the duplicate copy.

#### **9.12.6 *Material put up for Inspection towards the End of Delivery***

As far as possible, the inspection should be commenced and finished and the inspection report issued during the validity period of the contract. In cases where the supplier offers materials for inspection during the last few days of the contract delivery period or even on the last day of the contract delivery period, efforts should be made by the inspecting officer to commence the inspection before the expiry of the delivery period.

In cases where it is not possible to commence or conclude the inspection before the expiry of the delivery period, the inspecting officer should, immediately, on receipt of the intimation or request for inspection of the materials, bring this to the notice of the supplier orally as well as in writing. He must mention that the materials have been submitted for inspection at a very late stage and that it is not possible to commence/conclude the inspection before the expiry of the delivery period.

The supplier should also be informed that the goods offered for inspection should, however, be inspected until the completion of the inspection which can be after the expiry of the delivery period and that such an inspection continuing after the expiry of the delivery period is neither intended nor to be construed as condoning the delay or keeping the contract alive.

In such cases, the inspection note, whether accepting or rejecting the goods, should be duly franked as per the franking clause given below:

#### **9.12.7 *Franking Clause on Acceptance and Rejection***

*"The issue of this inspection/rejection report does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive.*

*The goods are being passed/ rejected without prejudice to the rights of the Government of India under the terms and conditions of the contract."*

This clause may also be incorporated in conditions of the contract.

#### **9.12.8 *Approval of Acceptable Deviations***

Under no circumstances will the inspecting officer have the authority to modify the governing specifications, approved drawings or samples during inspection without reference to the CA that approved the tender. For all cases of acceptance with deviation, the nature of deviation along with a justification for acceptance against such deviation should be duly documented. The CA that approved the tender should have the final decision on deviations.

Deviations from the contract specifications or requirements not affecting price, quality, performance and other terms of the contract may be allowed at the level of the CA in consultation with the user department on merits or nature of deviations.

In all other cases, the goods should be rejected giving all reasons by issuing a rejection inspection report. Rejections should not be made in a piecemeal manner.

### **9.13 Storage and Issue of Inspected Goods**

After satisfactory inspection and tests, the accepted materials should be stamped, labelled, marked, or sealed and stored in a systematic manner. This is to facilitate easy retrieval at a later stage. As all goods needed or procured cannot be consumed at one point of time, storage is an inevitable process. The storage system forms the key component of any materials management system. It should be ensured that the goods are stored in such conditions that they are protected against unauthorised removal and deterioration.

### **9.14 Accounting and Payment of Received Materials**

#### ***9.14.1 Goods Receipt and Inspection Report***

If the received material successfully passes the quantity and quality checks, accounting of material received shall be on the basis of the Goods Receipt and Inspection Report (GRIR) (Annexure 22) prepared after inspection and acceptance of the material which will be signed by the concerned officers. This includes cases where payment is made to the supplier on proof of dispatch, for which inspection at the suppliers' premises is conducted by an authorised officer of Procuring Entity prior to dispatch by suppliers. This excludes cases of imported materials where accounting will be done on completion of certain further formalities as per regulations and practices. While preliminary receipt is only an acknowledgement of quantity received, GRIR is an acknowledgement of receipt of the correct quantity as well as quality of goods. GRIR is a voucher which forms the basis for the supplier to claim payment as per the contract. It also is a voucher for accountal of the received material in the inventory accounts. Along with the GRIR, material is handed over to the warehouse where it is to be stored.

In case the received material fails to pass quantity and quality checks, a rejection GRIR is issued, noting the reasons for rejection. If feasible, a yellow paint mark should be put on the rejected material to prevent its resubmission by the supplier. The associated Finance/ FA should be asked to recover any advance payment or freight charges paid for the rejected quantity. The rejection GRIR contains instructions for the supplier to take back the rejected goods within a stipulated number of days (usually 21). Such removal should be permitted only after the advance payment/freight paid is recovered. Lots that are under inspection, accepted, or rejected should be properly tagged, segregated and identified.

### **9.14.2 Passing of Supplier's Bills**

After the GRIR is issued, the invoice is received from the supplier, supported by relevant documents evidencing award of purchase orders/contracts and receipt of materials/services. Based on contractual terms where payments are made based on proof of dispatch against a purchase order, bills shall be passed and accounted based on the GRIR of approved materials. The invoice submitted by the supplier will be verified and signed by the indenting officer, and pay order form (Annexure 23) or any other relevant forms will be prepared by the procuring entity and signed by an officer authorised to sign pay-orders. All correspondence with the supplier will be handled by procuring entity Department.

The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.

While claiming the payment, the supplier must also certify on the bill that the payment being claimed is strictly in terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

In case of part supply, the payment will be released by deducting 10 per cent of the bill value which will be released once the entire supply is made. Deduction of applicable taxes at source from payments to suppliers will be done as per the existing law in force during the currency of the contract.

<b>9.15 Contract Management - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
<b>Advance payments:</b> This is an area of risk in public procurement with undue and unintended benefits to the contractor, which vitiates the original selection criteria.	Any mobilisation or other advance payments should be interest bearing and should be only for justifiable cases. Terms of such advances should be expressly stated in the NIT/bid documents. The advance payment may be released in not less than two stages depending upon the progress of the contract. Advance should be progressively adjusted against bills cleared for payment. Interest should be charged on delayed recoveries irrespective of the reason stated.
<b>Contract changes and renegotiations:</b> This is also a risk area, where the procuring entity may not get what it contracted and paid for or may pay for what it has not received. On the other hand, the contractor may not get timely or proper amendments due to	Contract modifications and renegotiations should not substantially alter the nature of the contract. It should not vitiate the basis of the selection of the contractor. It should not give undue or unintended benefits to the contractor. However, for any changes caused by the procuring entity, the contractor should

changes asked by the procuring entities.	be adequately and timely compensated within the contractual terms.
<b>Supervising</b> agencies/individuals are unduly influenced to alter the contents of their reports so changes in quality, performance, equipment and characteristics go unnoticed.	A contract management manual or operating procedure should be prepared for large value contracts. There should be inbuilt systems of checks and balances.
<b>Contractor's claims</b> are false or inaccurate and are protected by that in-charge of revising them.	All large contracts should be formally reconciled for closure to ensure that the scope of the work and warranty/defect liability period is completed. This should include the dispute resolution forum for resolving disputes in a fixed timeframe with provision of escalation level.
<b>Payment to the contractor</b> is delayed intentionally or otherwise.	All payments/recoveries should also be reconciled. It should also be ensured that material/assets loaned to him including security passes are accounted for.
<b>Every dispute</b> lands up in arbitration or court cases, since the procuring entity is reluctant to grant compensation for its own lapses to the contractor.	
<b>Agents/ Sub-contractors</b> and partners, chosen in a non-transparent way, are unaccountable or are used to channel bribes.	Agents should only be as per the terms of the contract. Sub- contracting of the contract should normally not be allowed in procurement of goods.

## ***Chapter 10: Disposal of Scrap Goods***

### **10.1 Scrap for Disposal**

There accumulates, in every organisation, a large quantity of material which is neither usable for the purpose for which it was originally procured nor of any other operational value. Such material is generally called "scrap" and should be distinguished from other stores and component parts which can be utilised after repair or renovation. Occasionally, scrap may consist of second-hand or in excellent repair even new material which is surplus to the need of the organisation or its sister organisations and may command a fair price in the market not normally associated with scrap.

### **10.2 Classification and Categorisation**

It is very important to categorise the scrapped items under different trade groups based on the use to which the scrap purchaser can put it for commercial use, for example, melting, re-rolling, burning, recycling, and so on. Properly grouped and sorted scrap is likely to attract better value and help in keeping historical data of prices and facilitates fixing of reserve prices.

### **10.3 Survey of Materials for Classifying as Scrap for Disposal**

**10.3.1** Competent Authority to declare and dispose off Scrap Material may be laid down in the SoPP, based on the 'Book Value' or 5% of the Original/ Market Value of new goods, if Book value is either not available or has become negligible. Before any item of stores can be sold as 'scrap', it should be declared as such by the Survey Committee (SC) appointed by the Head of Office and the sanction of the CA obtained for such a sale. The CA may relax this need for survey by SC, as a standing order, in the case of a list of known items of scrap like Newspapers, containers etc of small value (Rs. 5,000). Lots of small value may also not require to be condemned by SC, on which the Head of Office may be given powers to declare such materials as scrap without survey committee. However, this dispensation is subject to furnishing of a certificate by the concerned departmental officer as laid down in the SoPP that the items being offered have been inspected by him personally and found unserviceable and unfit for any further use.

**10.3.2 Survey of Scrap:** Generally, items may be identified as scrap in any of the following cases:

- a) Whether the item has completed its expected useful life or not, factors such as norms for maintenance cost; norms for utilisation of such equipment; usability in the organisation or any other office must also to be considered before deciding on scrapping the equipment; and
- b) The item has a limited shelf life, exists in surplus quantities and there is likely to be no future use of the item during the remaining period of its useful life.
- c) The reasons for declaring the item surplus or obsolete or unserviceable should be recorded by the SC. A standard format for SC's recommendations for disposal of goods is provided in Annexure 25.
- d) SC may seek the approval of the CA with the concurrence of the Associated/ integrated Finance.

## 10.4 Modes of Disposal

The mode of disposal may be determined by the CA, keeping in view the necessity to avoid accumulation of such goods, consequent blockage of space and also deterioration in value of goods to be disposed of. The usual modes of disposal of scrap are:

- a) Small value scrap such as waste paper or industrial sweepings, and so on, up to a value of Rs. 5,000 in each case may be sold directly to the local scrap dealers on a summary quotation basis; and
- b) Scrap upto Rs 2 Lakhs may be sold on a Limited Tender basis to locally known Scrap Dealers of relevant category.
- c) Sale through a tender or through auctions through the e-auction portal or traditional public auction may be resorted to for scrap value above Rs. 2 lakh;
- d) Scrap which is a hazardous to the health/environment or a security risk (stamps, negotiable instruments, money value documents, security press items) may be destroyed suitably in the presence of a committee, which should issue a certificate of having destroyed these. Video recording may also be done of such disposal.

## 10.5 Preparation for Disposal

10.5.1 Scrap recommended for disposal should be segregated from other materials into an identifiable lot. It should be marked as such with a board, indicating the lot number and brief description. Valuable scrap such as non-ferrous metals should be secured in lockable rooms.

#### **10.5.2 Determining Reserve Price**

In any mode of disposal, material should not be sold at rates per lot but bids should be registered by rate per unit (number, length or weight) so that a complete check on the quantity delivered can be exercised, at any time. The Head of Office holding the stock may determine the reserve price with the concurrence of the Associated/ integrated Finance and approval of CA. In case of large value disposals a Reserve Price Committee may be appointed to recommend the reserve price. The use of external costing experts, price databases, price indices and data sharing may be done in the same manner as detailed in Chapter 2, para 2.1.1 (f) relating to the reasonableness for procurement prices. Large newspapers and economic dailies have dedicated sections dealing with rates in the scrap market. The reserve price should be recorded on a page numbered register in advance of the date of disposal. This register should be sealed immediately after the reserve prices of all lots are recorded in the register, and kept in safe custody. The sealed register should be opened just before the e-auction creation/tender opening. Some methods for determining reserve prices are:

- a) Book value with depreciation. In case the Book value is not available or has become insignificant, the reserve price may be based on 5& of the Original or Market cost of the new item;
- b) Last sale price moderated by quantity, quality, location, market condition, price trend of various metals, and so on;
- c) Prevailing market price ascertained through a market survey; and
- d) Costing analysis based on costs of various elements of the item (discounted for melting losses).
- e) In cases where the reserve price cannot be fixed as per the laid down procedure an Insurance Regulatory and Development Authority (IRDA)-approved valuer may be engaged for valuation of such material and the Reserve Price Committee will take into account the valuation given by the valuer while recommending the reserve price.

### **10.6 Conditions of Disposal Applicable to all Modes of Disposal**

#### ***10.6.1 'As-Is-Where-Is' basis***

Notwithstanding anything contained in the e-auction or advertisement issued on the description and particulars of material for sale, the sale is on 'as-is-where-is' basis only and the principle of caveat emptor (let the buyer be aware) will apply. As is where is means that the description/quality/quantity indicated are approximate and the seller does not give any assurance or guarantee that the material will strictly adhere to the advertisement or e-auction. All items shall be

taken delivery of from the site by the successful bidders, with its faults and errors in description, if any. Neither can the sale be invalidated nor the bidder make any claim/compensation, whatsoever, on account of any defect in description or deficiency in the quantity and quality. No plea of misunderstanding or ignorance of conditions put forth subsequent to a confirmation of sale shall be accepted.

#### ***10.6.2 Inspection by Bidders***

In view of the 'as-is-where-is' condition, bidders are advised to quote rates only after inspection of items at the site. The bidder or his authorised representative may inspect the materials as per the inspection schedule mentioned in the auction details, between 11 am to 4 pm (excluding lunch hours) on any working day at the location specified against each lot with the prior permission from the contact person, as given in the auction details. The detailed description of all lots, including the list of spare parts, if any, is available at the site.

#### ***10.6.3 Right to Reject all Bids***

The seller reserves the right to accept/reject and cancel any bid, amend the quantity under any lot or withdraw any lot at any stage after acceptance of bid/issue of acceptance letter/sale order/delivery order/deposit of the full sale value by the bidder, without assigning any reason thereof and the value of such material, if paid for, shall be refundable. The seller shall not be responsible for damage/loss to bidders on account of such withdrawal at any stage from the sale.

#### ***10.6.4 Excise Duty and Taxes***

Any statutory variations in the rate of taxes/duties are to be borne by the purchaser. VAT/excise duty rates indicated in the e-auction catalogue or Tender advertisement are only indicative and the actual VAT rates as applicable on the date shall be payable by the successful bidders directly to the seller at the time of taking delivery of materials. Form 'C' will be accepted. In order to avoid the imposition of penalty, the amount deposited by the successful bidder towards taxes and duties will be immediately deposited with the concerned tax authorities without waiting for the actual delivery.

### **10.7 Disposal through Tender**

Disposal through tender could take place through the e-procurement portal or normal tendering. In the bidding documents, GCC may be laid out.

The broad steps to be adopted for this purpose are:

- a) Preparation of bidding documents;

- b) Invitation of tender for the surplus goods to be sold;
- c) Opening of bids;
- d) Analysis and evaluation of bids received;
- e) Selection of the highest responsive bidder;
- f) Collection of sale value from the selected bidder;
- g) Issue of sale release order to the selected bidder;
- h) Release of the sold surplus goods to the selected bidder; and
- i) Return of bid security to the unsuccessful bidders.

Any special conditions of contract for each lot may also be given. Important aspects to be kept in view while disposing the goods through an advertised tender are:

- a) The basic principle for sale of such goods through an advertised tender is ensuring transparency, competition, fairness and elimination of discretion. Wide publicity should be ensured of the sale plan and the goods to be sold;
- b) All required terms and conditions of sale are to be incorporated in the bidding document comprehensively in plain and simple language. The applicability of taxes, as relevant, should be clearly stated in the document. The bidding document should also indicate the location and present condition of the goods to be sold so that the bidders can inspect the goods before bidding;
- c) Bidders should be asked to furnish bid security (EMD) along with their bids. The amount of bid security should ordinarily be 5 per cent of the assessed or reserved price of the goods. The exact bid security amount should be indicated in the bidding document. The EMD shall be forfeited if the tenderer unilaterally withdraws, amends, impairs or derogates from his offer in any respect within the period of validity of his offer;
- d) Late bids, that is, bids received after the specified date and time of receipt should not to be considered
- e) The bid of the highest acceptable responsive bidder should normally be accepted and an acceptance/sale order be issued. However, if the price offered by that bidder is not acceptable, a negotiation may be held only with that bidder;
- f) In case the selected bidder does not show interest in depositing the balance sale value or in lifting the goods, the bid security should be forfeited and other actions initiated including resale of the goods in question at the risk and cost of the defaulter, after obtaining legal advice.

- g) In case the total quantity to be disposed cannot be taken up by the highest acceptable bidder, the remaining quantity may be offered to the next higher bidder(s) at the price offered by the highest acceptable bidder. The minimum quantity to be accepted shall be indicated in the tender.
- h) If the tenderer's offer is not accepted, the tenderer's EMD shall be refunded to him. No interest shall be payable on such refunds. The EMD deposited by the successful tenderer shall remain with the disposing department till payment of the SD money has been made. It may be adjusted as part of the total SD money at the discretion of disposing department;
- i) The powers to accept the TC's recommendations for the disposal of the equipment shall lie with HOD;
- j) The acceptance letter/sale order would be issued to the successful bidder(s) notifying the amounts and schedule of submission of SD and Balance Sale Value (BSV);
- k) Successful tenderers, herein after referred to as purchasers, shall have to submit a SD @ 25 per cent of the total sale value of the contract within seven calendar days of the issue of the acceptance letter/sale order (excluding the date of issue). The SD shall be deposited in the form of bank draft/pay order, drawn on any of the commercial bank in favour of officer concerned as mentioned in the NIT;
- l) BSV: The successful bidder in an e-auction or tender sale may be allowed 15 calendar days (including the date of acceptance letter/sale order) for payment of BSV. The Head of Office may grant an extension of time for the payment of BSV with late payment charges @ 1 per cent per week or part thereof up to two weeks only and, thereafter, the SD will stand forfeited without notice, after taking into consideration the prevailing market rates and trends. Extensions should not be granted as a matter of routine. The date of submission of the demand draft in the cash office is the date of payment for all purposes. No interest will be paid to the purchaser for the amounts paid or deposited and subsequently found refundable to the purchaser under any of the conditions of the contract; and
- m) **Delivery Order:** The delivery order is not essential when the BSV is directly collected by Head of Office and delivery may be made to the purchaser or his agent on the strength of the cashier's receipt.

## 10.8 Disposal through Auction

- a) A ministry or department may undertake auction of goods to be disposed of either directly or through approved auctioneers.

- b) The basic principles to be followed here are similar to those applicable for disposal through the advertised tender so as to ensure transparency, competition, fairness and elimination of discretion. The auction plan including details of the goods to be auctioned and their location, applicable terms and conditions of the sale, and so on, should be given wide publicity in the same manner as is done in case of the advertised tender.
- c) While starting the auction process, the condition and location of the goods to be auctioned, applicable terms and conditions of sale, and so on, (as already indicated earlier while giving wide publicity to it), should be announced again for the benefit of the assembled bidders.
- d) During the auction process, acceptance or rejection of a bid should be announced immediately on the stroke of the hammer. If a bid is accepted, SD (not less than 25 per cent of the bid value) should immediately be taken on the spot from the successful bidder either in cash or in the form of deposit-at-call-receipt, drawn in favour of the FA of the disposing organisation. The goods should be handed over to the successful bidder only after receiving the balance payment as in case of sale through tenders.
- e) The composition of the auction team will be decided by the CA. The team should however include an officer of the internal finance wing of the department and a representative of security staff.

## **10.9 Disposal at scrap value or by other modes**

If a ministry or department is unable to sell any surplus or obsolete or unserviceable item at the reserve price, in spite of its attempts through an advertised tender or auction, it may dispose it off at its scrap value with the approval of the CA in consultation with the Associated/ integrated Finance. In case the ministry or department is unable to sell the item even at its scrap value, it may adopt any other mode of disposal including destruction of the item in an eco-friendly manner.

## **10.10 Delivery of Sold Material**

### ***10.10.1 Free Delivery Time and Ground Rent***

Delivery has to be taken within 30 calendar days (called free delivery period) from the date of the acceptance letter/sale order (excluding the date of issue of acceptance letter/sale order). The delivery of material will be given only after realisation of the demand draft/pay order. If the purchaser is not able to lift the material within the free delivery period, he may request for an extension. Such extensions are generally granted after levying a ground rent @ 1/2 per cent of the sale value per day. But, in some genuine cases, the levy of ground rent may be waived. An accounts

representative will be responsible for seeing that when the ground rent has become due, it is recovered by the stock-holder before delivery of the stores. The amount realised as ground rent should be noted in the issue note by the stock holder and certified by the stock verifier. The stock-holder will be responsible for remitting the cash to the cashier and obtaining a receipt.

#### **10.10.2 *All Risks to the Buyer***

The items shall remain, in every aspect, at the risk of the buyer from the time of acceptance of his offer. The seller will not undertake any liability whatsoever for the safe custody, protection or preservation after the sale has been confirmed. Lots are put up for sale, subject to change by nature's wear and tear. No complaint regarding the quality or description of the materials sold will be entertained once the bid has been accepted.

#### **10.10.3 *Terms of Delivery***

No picking, choosing, sorting, welding, cutting or breaking of goods or materials sold will be permitted unless otherwise specified. In used/waste oil, separation of oil and water, and so on, shall not be allowed at the site. If these actions are allowed, there is possibility of leakages. In mixed lots, the buyer may take undue advantage by leaving cheaper components behind. If whole machinery is sold and cutting and breaking is allowed, it would be difficult to ensure that the purchaser is taking out only his own cut material and not other unsold material or from other scrap lots. If any foreign materials are found to be mixed in the lot, other than the items included in the auction catalogue and acceptance letter/sale order, the seller reserves the right to remove them at the time of delivery. The buyer shall not be entitled to re-sell an item, lot or part of a lot while the goods are still lying within the premises of the seller and any such sale or assignment of the buyer's right to the material sold in an auction will not be recognised. All documents for releasing materials will be made out in the name of the buyer only.

The material will be delivered only to the successful bidder or his authorised representatives against the presentation of the buyer's identity proof. If the successful bidder desires to authorise a representative or an agent to accept delivery, the bidder shall produce a suitable power of attorney or authorisation letter for each lot separately, duly attested, by a notary public authorising his representative or agent to lift the material from the seller.

#### **10.10.4 *Default by Seller***

The seller will not be, in any way, responsible for failure to deliver the material due to causes beyond his control such as a strike, lockout, cessation of work by labourers, shortened hours, act of God or

other causes or other contingencies whatsoever. The buyer shall not be entitled to cancel the contract and the period of delivery shall automatically be extended proportionately.

#### **10.10.5      *Default by Buyer***

Materials sold but not removed within the specified date will become the property of the seller and it will have the right to dispose of such goods in any manner as he deems fit without any notice.

#### **10.10.6      *Witnessing Delivery***

All materials sold shall be weighed or counted before delivery, this being supervised by the:

- a) Stock-holder's representative;
- b) Accounts representative – stock-verifier;
- c) Representative of the security force of a rank not less than sub-inspector; and
- d) Representative of the purchaser (if he wants to be present).

#### **10.10.7      *Deliveries of Scrap***

At the time of delivery of scrap material to the purchaser, the weighment is to be done in the presence of the Assistant Officer (AO), so nominated by the Head of Office. The AO and accounts representative will sign a joint statement indicating the type of scrap, name of the party to whom scrap is delivered and quantity as per the weighment slip. The stock-holder should arrange for the deliveries to be affected according to the agreement and terms and conditions of sale. He should take every possible step to expedite delivery of the auctioned materials. The stock verifier should count, measure or weigh each lot or part of a lot after comparison of the description and quantity shown in the sold lot to ensure that only such kinds and quantities of materials as have been shown in the sold lot are being issued; he should sign the gate passes and issue notes in token of such a check. In giving delivery of scrap of non-ferrous items, the material should be weighed on electronic weighing scales and the weight of each consignment should be recorded in detail by the stock verifier in his field book.

He should sign the issue note after fully satisfying himself that entries made therein agree with those in the field book. The field book should be attested by the other representatives making delivery of the goods in token of their having accepted the correctness thereof.

The empty and loaded trucks or carts should be weighed and particulars of the gate pass issued recorded. The issue note and gate pass should be countersigned by the stock verifier.

The loading of the sold materials should be done under the supervision of the stock-holder and be witnessed by other representatives. The stock-holder will be responsible for realising the loading charges, if any, from the purchaser.

#### **10.10.8 *Variation in Available Quantity***

At the time of delivery, the actual quantity may vary from the quantity mentioned in the delivery order. In case of excess available material, the seller reserves the right to retain material in excess of quantity in the lot at its discretion. The purchaser may be allowed to lift the additional quantity after making the requisite additional payment to the seller.

If the quantity in a lot on actual weighment or count is less than the announced quantity, the seller will not make good the deficiency under any circumstances. The purchaser thereof will be entitled to obtain a refund for the undelivered quantity at the quoted rate. No interest will be paid on the amount of short delivered quantity. The reasons for shortfall should be recorded by the stock-holder and the Head of Office should also record his opinion. Any refund in this regard will be made with the Head of Office's recommendation, the Associated/ integrated Finance's concurrence and CA' approval. Copies of the weighment slip will be the base for determining the refund amount. It may be necessary to look into the ledgers for the total quantity held by the stock-holder and particularly so in the case of non-ferrous scrap; the item concerned may have to be processed for special stock verification. In case of a short delivery of the material, the refund of taxes will be the responsibility of the successful bidder only.

#### **10.10.9 *Conclusion of Delivery***

The seller's responsibility ends after the consignment has been loaded and handed over to the representative of the purchasers. The seller will be no party to any dispute that may arise after the loading has been completed. At the conclusion of the delivery of the lot or lots, pertaining to the item of scrap, any stock, left over should be verified by the Accounts Department with the book balance and any discrepancies adjusted. Such "left over" stock may be transferred to fresh scrap of similar description. At the conclusion, a report of sale account of goods disposed has to be submitted to the CA and FA, to show that only the material paid for (and nothing else) has been disposed of and that all payments due (and nothing less) have been credited to the relevant accounts. A format of the report is shown in Annexure 26

### **10.11 *Procedure for Adjustment of Sale Proceeds in the Books of Accounts***

The following procedure may be followed for adjustment of sale proceeds in the books of accounts:

- a) If the realised price is more than the book value, the sale proceeds should first be applied towards the ‘head of account’ in which the book value is lying, and the remaining portion should be treated as “profit on sale of capital asset”; and
- b) If the realised price is less than the book value, it should be apportioned in the ratio of the reserve price of the equipment and that of the spares. In this case, the CA’s sanction to write off the difference between the book value and the realised price would be necessary.



*Department of Expenditure, Ministry of Finance, Government of India*

***Manual on Policies and Procedures***

***For Procurement of Goods***

***Beta Draft***

***ANNEXURES***

***Procurement Policy Division***

***15-Aug-16***



Hierarchy Level	<b>Annexure 1: Procurement Guidelines</b> (Refer Para 1.1)
I – Statutory Framework	The Constitution of India
	Indian Contract Act, 1872; Sale of Goods Act, 1930 and other Mercantile Laws
	Other Laws relevant to Public Procurement (Right To Information Act, 2005; The Micro, Small and Medium Enterprises Development Act, 2006; Prevention of Corruption Act, 1988 etc)
II – Rules and Regulations	General Financial Rules, 2005
	Delegation of Financial Power Rules, 1978
	Any other financial, vigilance, security, safety, counter- trade and other regulatory aspects; orders and guidelines of the Government on the subject of Public Procurement
III – Ministry of Finance's Manuals	Ministry of Finance's Manual of Policies and Procedures for the Procurement of Good/ Works and Consultancy Services (including non-consultancy services)
IV – Procuring Entities' Codes/ Manuals and Standard Bidding Documents	More Comprehensive and detailed Codes and Manuals for Public Procurement for various categories issued by 'Procuring Entities' for their own use
	Standard Bidding Documents for Procurement of Goods/ Works/ Consultancy Services etc.

**Remarks:** The documents at Hierarchy Levels I and II above are of fundamental and generic nature. Documents at lower levels of hierarchy must conform to the Documents higher up in hierarchy. Relationships of Bidders /Suppliers / contractors /service providers with procuring entities are solely governed by the law of the land and the relevant bid/ contract/registration document(s). Other documents at hierarchy levels II and III mentioned above shall have no locus standii in such relationships.

## **Annexure 2A: Delegation of Financial Powers – Indents, Contracts and Purchases for public service**

(Excerpts from DFPR, 1978, Refer Para 1.4.1)

DFPR Rule 21 of the Delegation of Financial Power Rules, 1978**	DFPR Rule 21(a) Minister in Charge of the Department	DFPR Rule 21 (b)Secretary of the Department
For open or limited tender contracts	Full Powers	Rs. 20 crore@@
For negotiated or single tender or proprietary contracts		Rs. 5 crore
For agreements or contracts for technical collaboration and consultancy services		Rs. 2 crore

\*\* DoE, Ministry of Finance No.F.1(17)-E.II(A)86-No.F.1(15)-E.II(A)88 Dated: 16th September, 2003

@@ Secretary, D/o Commerce would have powers to approve rate contracts of DGS&D of value upto Rs. 100 crore in each case (DoE, Ministry of Finance No.1 (5)/E.II(A)/2009 Dated: the 24th December, 2009)

Notwithstanding anything contained in sub-rule (a) and (b), in cases where the award of contract or purchase or consultancy is inseparably linked with the project or scheme and forms a part of the proposals for Standing Finance Committee (SFC) or Committee on Non-Plan Expenditure (CNE) or Expenditure Finance Committee (EFC) or Cabinet, the same will be processed as per the financial limits laid down for sanction of such schemes or projects by the Competent Authority.

Explanation- In this rule, the word "contract" includes miscellaneous contracts, such as handling contracts and leases. Leases for hiring accommodation for office, residential and other purposes shall, however, be regulated under item 16 of the Annexure to Schedule V. If a contract extends over a period of time, the total value over the entire period of currency shall be taken for the purpose of applying the limit. **Further a limited or open tender which results in only one effective offer shall also be treated as a single tender contract.**"

## ***Annexure 2B: Powers for Incurring Contingent Expenditure***

(Excerpts from DFPR Rule 13 (3), Schedule V, Refer Para 1.4.1)

<b>Authority</b> (1)	<b>Extent of power</b> ^{&&}	
	<b>Recurring</b>	<b>Non-recurring</b>
Departments of the Central Government:		
(i) Vice-President's Secretariat.	Full powers	Full powers
(ii) Other Departments	Full powers	Full powers
Administrators	Full powers	Full powers
Heads of Department	%%The Departments of the Central Government shall, in consultation with the Financial Adviser of the Department concerned, have full powers for deciding the financial limit up to which they can delegate powers to Heads of Departments and also to what extent these powers may be exercised by such HODs without consultation with FA of the Department.	
Heads of Offices other than Under Secretaries	Rs. 1000 per month in each case	Rs. 5000 in each case.
Under Secretaries in the Departments of the Central Government declared as Heads of Offices.	Rs.2000 per month in each case	Rs.5000 in each case.

^{&&} Expenditure on indents, Contracts and Purchases is included under contingent expenditure (except where it is treated otherwise, e.g., stores relating to works).

%% DoE, Ministry of Finance No. 1 (11)/E.II(A)/2003 Dated: 1st February, 2005 and No.

1/7/E.II(A)/2008 Dated: 30th May, 2008

**Explanation** The powers delegated to the Departments of the Central Government are to be exercised by the issue of formal sanctions in the name of the President, such sanctions being authenticated by the officers authorised to do so under Article 77 of the Constitution.

The Under Secretaries in the Departments of the Central Government who are declared as Heads of Offices under Rule 14 of DFPR may sanction contingent expenditure up to the extent indicated in the Table above without issuing formal sanctions in the name of the President.

## **Annexure 2C: Suggested Structure of Schedule of Procurement Powers (SoPP)**

(Refer Para 1.4.1, 2.3 and 7.3)

A suggested structure of SoPP<sup>29</sup> is given below. However individual threshold values (wherever not given in GFR/ DFPR) would depend on the respective circumstances of various Organisations.

	Threshold Value in Rupees (Lakh)				
<b>Levels of Powers -&gt; Level 1 is entry level and Level 5 is highest e.g. Secretary</b>	<b>Level -1</b>	<b>Level-2</b>	<b>Level 3</b>	<b>Level-4</b>	<b>Level-5</b>
<b>Indents initiation, approvals and Signing: Including formulation of Technical Specifications</b>					
Technical Approval					
Administrative, Budgetary Approval					
Initiation, Signing & Submission					
Approval and Signing of PAC					
Approval and Signing of Urgency Certificate for SLTE or for acceptance of Single offer received against LTE					
Approval & Justification for STE without PAC					
<b>Approval for Floating of Tenders of Various Types including</b>					
<b>Selection of Mode of Procurement and Biding System, Short List of Bidders for LTE/ SLTE, Bid Documents Preparations, including parameters of SBD and variation there -from in AITB, SCC, Eligibility/ Pre-Qualification Criteria, Decisions of Bid Cost, EMD/ PBG; Quantity, Slicing/ Packaging of requirements; non-standard payment terms, Advance Payment, Stage Payments, Proforma invoice payment, Exchange Rate Variations, Price Variations Clauses, LC payments etc</b>					
OTE/ LTE/ PAC tenders as per Norms					
STE without PAC Tender					
GTE Tenders					
Single Stage Two Envelop System					

<sup>29</sup> indicate value threshold above which consultations with/ concurrence/ vetting from IFD would be required

Prequalification Tender Two Stage or Single Stage 3 Envelops					
EOI Tenders					
Approval of Retendering of a discharged tender after second attempt					
<b>Competent Authority (CA) for Evaluation and Acceptance of Tenders</b>					
Procurement without calling Quotation					
Procurement Through a Purchase Committee					
Procurement Through Spot Purchase Committee					
Direct Approval of Tenders Without Tender committee					
To accept Single Tender Purchase of Steel Items from Steel PSUs or Petroleum Products from Petroleum PSUs					
<b>Tender Committee Composition (including Member Secretary thereof) as well as designated level of CA for Acceptance of TC Recommendations for Various Slabs of Estimated Tender Value. Normally there should be standing Tender Committees</b>					
Slab 1 (Rs 10 Lakh to 30 Lakh) – Level 2 officers' TC, Acceptance by Level 3 Officer					
Slab 2 (Rs 30 Lakh to 2 Crore) – Level 3 Officers' TC acceptance by Level 4 Officer					
Slab 3 (Rs 2 Crore 25 Crore) – Level 4 officers' TC acceptance by Level 5 Officer					
Higher levels and other type of TC to suit local requirements, Acceptance at Sec level					
Approval of acceptance of Single Offer against GTE/ OTE/ LTE and acceptance of unsolicited Offers in LTE against urgency certificate by the indentor					
<b>Formulation and Placement of Contracts</b>					

Contracts after following Tendering Process					
Contracts of Withdrawal against DGS&D or local Rate Contracts					
Approval of Direct Procurement of items which are available in DGS&D Rate Contracts (not more than 1.5 Lakh on each occasion, with annual ceiling of Rs 8 Lakhs for each Item)					
Placement of Indents on Canalized Agencies/ DGS&D/ Other Govt Departments.					
<b>Acceptance of Special Conditions with concurrence of Finance before Award of Contract as per recommendation of TC/ CA</b>					
Acceptance of 100% Payment against Proforma Invoice					
Other Variations demanded by Suppliers in special circumstances.					
<b>Post Contract Powers, including</b>					
<b>Bill Passing and Payments, Handing over assets/ equipments/ material/ utilities to Contractor; Extensions with/ wo LD, or approvals of Variations, Contract Closure, Terminations, Arbitrator appointment, Accepting and sanctioning Court and Arbitration award</b>					
Waiver of Liquidated Damages					
Write off Losses due to impossibility of recovery of Risk Purchase, General Damages, Liquidated Damages, Rejected Goods					
Acceptance of Goods by Consignee after expiry of delivery period for small value/ marginal delays					
Acceptance of Excess or Short deliveries upto 5% of total quantity and to treat contract as closed.					
Allowing release of Time-barred claims					

Grievance Redressal Levels of GRO/ GRC					
<b>Disposal of Scrap</b>					
Approval of Declaration of Materials as Scrap, with and without formality of Survey Committee. (Includes nomination of Survey Committee)					
Decision of Mode of Procurement, Preparation of Catalogues for Auction and Bid Documents for Tenders					
Approval of Reserve Price Fixation. (Includes nomination of officers/ committee to decide the Reserve Price)					
Acceptance of Tender Committee Recommendation/ Conduct of Auctions (including acceptance of bids)					
Extension of period to deposit Balance Sale Value or Date of Delivery of Materials					

### ***Annexure 3: Purchase Requisition (Indent) for Goods (Non-stock)***

Name of Indenting Office \_\_\_\_\_

#### **Purchase Requisition for Goods (Non-stock)**

(Send in duplicate and separate requisition to be furnished for each Trade Group)

(Refer Para 4.4.2 and 5.1.1)

NO.				Date :						
Dept:			Office :							
Category of stores/ trade group			In case of equipment spares - details of equipment/ assembly where fitted:							
Goods are required by Date					Consignee and place of delivery					
Details of items										
Sr No	Description/Specification/ Drawing/ Sample	Unit	Past Consumption			Available Stock if any	Total Qty. Indented	Estimated/Past Purchase Rate	Last Purchase Reference	Total Estimated Cost
			Yr-3	Yr-2	Yr-1					
a	b	c	d	e	f	m				
Estimate name/ number										
Allocation : No					Code No					
Is proprietary certificate attached: <input type="checkbox"/> Yes, reference/ <input type="checkbox"/> No										
It is certified that all										
<ol style="list-style-type: none"> <li>1) Description and technical specification and quantity are in conformity with the guidelines in this regard in the Procurement Manual for Goods.</li> <li>2) Technical and financial approvals at appropriate levels as per DPFR have been obtained.</li> <li>3) Funds are provisioned for, in the budget.</li> <li>4) The quantity indented does not exceed any sales, consumption or usage limits of requirements, if any laid down by competent authority.</li> </ol>										
Signatures Office Superintendent						Signature Indenting officer				

***Annexure 4A: Purchase Requisition Register for Indenters***

\_\_\_\_\_ (Name of Indenting Office)

**Purchase Requisition (PR) Register for Indenters**

(Refer Chapter 2 Para 2.1.2)

(To be prepared and maintained by the intending divisions)

Name of Procuring Entity to whom PRs sent

Sr. No.	Description	Qty.	PR No. And date	Date of submission	Ascertained from Procuring Entity					Date of Receipt of Material	Remarks
					Tender No: and opening date	Contract Ref & Date	Qty.	Name of the Supplier	Delivery Date		
1	2	3	4	5	6			7	8	9	10

Office Superintendent

Indenting Officer

## ***Annexure 4B: Purchase Requisition Register for Procuring Entity***

Name of the Procuring Entity \_\_\_\_\_

### **Purchase Requisition (PR) Register for Procuring Entity**

(Refer Chapter 2 Para 2.1.2)

(To be prepared and maintained by the Procuring Entity)

Date/ Sr No	Tender File No.	PR No. and Date	Description	Qty.	Date of Receipt of PR	Indenter	Tender Type/ Date of Floating	Date of Tender Opening	Contract Number and Date	Supplier	Qty.	Delivery Date	Sr. No. of Contract Progress Register	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	

**Office Superintendent**

**Procuring Officer**

Note:

- 1) The register will be reviewed and signed by Head of Office every month.
- 2) A summary will be prepared and submitted to HOD every quarterly.

## **Annexure 5: Limited Tender Form**

(Refer Para 4.4.3 and 5.5.1)

*Name of the Procuring Entity* \_\_\_\_\_

<b>Firm's Reference</b>				<b>Date</b>	
Telegram		<b>Limited Tender Form</b>		Address:	
Phone					
Fax					
Telex					
M/s:		Enquiry No. and Date			
		Date of Tender Opening			
<i>The tender would be opened at 3 pm on the date of tender opening above, at the address mentioned above.</i>					

Please submit on or before 3:00 pm on the date of tender opening, your quotation for the following goods, in accordance with the terms and conditions printed overleaf, in a sealed cover, marked on top with – Enquiry No; Date of Tender Opening.

Yours Sincerely  
Procuring Officer

### **Tender Schedule**

Sr No:	Description and Specification of Material	Quantity	Unit	Delivery Required	In Figures and in Words Rs.		Taxes & Duties
					Rate per Unit	Value	

### **Enclosed Specifications/Drawings/Special Conditions of Contract:**

- i)
- ii)

### **Item/Tender Specific Conditions of this Tender:**

- i)

I/ we engage to supply the material(s) to your office and comply the following:

- i) Tender schedule and technical specification indicated.
- ii) Item/tender specific conditions for this tender.
- iii) Terms and conditions printed overleaf.
- iv) General conditions of contract signed by me at the time of supplier registration (for registered suppliers).
- v) I/we confirm that set off for the ED, VAT, etc. Paid on the inputs have been taken into consideration in the above quoted price and further agree to pass on such additional duties as sets offs as may become available in future under MODVAT, VAT, etc.
- vi) This offer is valid for 90 days from the date of opening of the tender.

Signature & Seal Place & Date:		Name of Authorised Signatory:	
Address:		Tel. No./ Fax. No./ Mobile No. Email Id:	

**TERMS AND CONDITIONS OF LIMITED TENDER**

- 1 The quotation must be in the form furnished by procuring entity and should be free from corrections/erasures. In case there is any unavoidable correction it should be properly attested. If not the quotation will not be considered. Quotation written in pencil will not be considered.
- 2 Quotation will be opened on due date at 3.00 pm at the indicated venue in presence of the tenderers or their representatives who may wish to be present.
- 3 The Government of India reserves the right to accept the offer by individual items and reject any or all tenders without assigning any reason thereof and does not bind itself to accept lowest quotations.
- 4 Participation in this tender is by invitation only and is limited to the selected procuring entity's registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may bring it to the notice of procuring entity and apply for registration as per procedure. Note: to get registered as an approved supplier with the procuring entity, please download supplier approval form from \_\_\_\_\_ and submit.
- 5 Manufacturer's name and country of origin of materials offered must be clearly specified. Please quote whether your organisation is large scale industry or small scale industry. If you have NSIC/ SSI/ MSI/ DGS&D Certificate, please attach it to the quotation. Mention your registration details.
- 6 Complete details and ISI specification if any must accompany the quotation. Make/ brand of the item shall be stated wherever applicable. If you have got any counter offer as suitable to the material required by us, the same may be shown separately.
- 7 Samples must be submitted where specified along with the quotations. Samples must be carefully packed, sealed and labelled clearly with enquiry number, subject and sender's name for easy identification. Rejected samples will be returned at your cost if insisted.
- 8 All drawings sketches and samples, if any, sent along with this enquiry must be returned along with quotations duly signed.
- 9 All supplies are subject to inspection and approval before acceptance. Manufacturer/supplier warranty certificates and manufacturer/ government approved lab test certificate shall be furnished along with the supply, wherever applicable.
- 10 The Government of India reserves the right to modify the quantity specified in this enquiry.
- 11 The prices quoted should be firm till the supplies are completed. Please quote the rates in words and figures. Rates quoted should be free delivery at destination including all charges otherwise the quotation is likely to be rejected. Prices quoted for free delivery at destination will be given preference. If there is no indication regarding the FOR, in the quotation, then it will be considered as FOR destinations. Price quoted should be net and valid for a minimum period of three months from the date of opening of the quotation.
- 12 In case the items in the enquiry are covered by any rate contract or running contract finalised by the DGS&D or any other state or central government, it should be specified in your quotation and accepted contract rates should also be mentioned. It should be confirmed whether you could supply at the RC rates outside rate contract.
- 13 Payment of sales tax is primarily the responsibility of the seller and will not be paid unless the percentage value is clearly mentioned in the quotations. If no indication regarding CST/ST is recorded in the quotation, the CST/ST will be considered as included.
- 14 Delivery period required for supplying the material should be invariably specified in the quotation.
- 15 In case your quotation is accepted and order is placed on you, the supply against the order should be made within the period stipulated in the order. The Government of India reserves the right to recover any loss sustained due to delayed delivery by way of penalty. Failure to supply the material within the stipulated period shall entitle Procuring Entity for the imposition of penalty without assigning any reasons @ 1/2% of the total value of the item covered in order as penalty per day subject to a maximum of 5% unless extension is obtained in writing from the office on valid ground before expiry of delivery period.
- 16 If the deliveries are not maintained and due to that account Procuring Entity is forced to buy the material at your risk and cost from elsewhere, the loss or damage that may be sustained thereby will be recovered from the defaulting supplier.
- 17 Dispute clause: Any dispute relating to the enquiry shall be subject to the jurisdiction of the court at [indicate Place] only.
- 18 Our normal payment terms are 100% within 30 days on receipt and acceptance of material at our site in good condition.

## ***Annexure 6: Proprietary Article Certificate***

Valid for the Current Financial Year

(Refer Para 4.6.1)

File Number and Date Reference		
1	Description of article	
2	Forecast of quantity/annual requirement	
3	Approximate estimated value for above quantity	
4	Maker's name and address	
5	Name(s) of authorised dealers/ stockists	
6	I approve the above purchase on PAC basis and certify that: -- Note- Tick to retain only one out of (b), (c-1) or (c-2) whichever is applicable and cross out others. Please do confirm (a) by ticking it – without which PAC certificate will be invalid.	
6(a)	This is the only firm who is manufacturing/stocking this item. AND <input type="checkbox"/>	
6(b)	A similar article is not manufactured/sold by any other firm, which could be used in lieu OR <input type="checkbox"/>	
6(c-1)	No other make/brand will be suitable for following tangible reasons (like OEM/ warranty spares): OR <input type="checkbox"/>	
6(c)	No other make/brand will be suitable for following intangible reasons (if PAC was also given in the last procurement cycle, please also bring out efforts made since then to locate more sources): OR <input type="checkbox"/>	
7	Reference of concurrence of finance wing to the proposal: <input type="checkbox"/>	

History of PAC purchases of this item for past 3 years may be given below			
Name of the Supplier			
Order/ Tender Reference& Date	Quantity Ordered	Basic Rate on Order (Rs.)	Adverse Performance Reported if Any

Signature of Approving Authority-----

Date ----- Designation of Officer -----

***Annexure 7: Purchase without Quotation Format***

(Refer Para 4.9.2)

Ref No: \_\_\_\_\_

Place: \_\_\_\_\_ Date: \_\_\_\_\_

“I, \_\_\_\_\_, am personally satisfied that the goods (described below) purchased are of the requisite quality and specification and have been purchased from a reliable supplier/ contractor at a reasonable price.”

Item:	
Quantity:	
Indenter:	
Unit Rate:	
Taxes/Duties:	
Other Charges:	
Total Unit Price:	
Total Price:	
Purchased from: M/S	
Vide Bill No.:	
Justification:	
Cheque may be drawn in favour of	
Name:	
Designation:	
Signature:	

## ***Annexure 8: (Spot) Purchase Committee Certificate Format***

(Refer Para 4.10.2 and 4.11.2)

Ref No: \_\_\_\_\_

Place: \_\_\_\_\_ Date: \_\_\_\_\_

“Certified that we the undersigned, members of the (spot) purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier/contractor recommended is reliable and competent to supply the goods in question.” The details of recommended purchase are:

Item:						
Quantity:						
Indenter:						
Details of Prices Ascertained						
Bidder	Unit Rate:	Taxes/Duties:	Other Charges:	Total Unit Price:	Total Price:	Recommendations & Comments
Selected Quotation						
Bidder						
Unit Rate, Taxes/ Duties/ Other Charges						
Total Unit Rate						
Total Value of Purchase						
Cheque may be drawn in favour of						
Signature:		Signature:			Signature:	
Name 1:		Name 2:			Name 3:	
Designation:		Designation:			Designation:	

## ***Annexure 9: Sample Prequalification Criteria***

(Refer Para 4.15.2)

### **Criteria 1 - Experience and Past Performance:**

(a) The bidder (*manufacturer or principal of authorised representative* – hereinafter referred simply as ‘The Bidder’) should have regularly for at least the last **[three<sup>30</sup>]** years, ending 31<sup>st</sup> March (or any other year ending followed in relevant country) of the previous financial year (hereinafter called ‘The relevant Date’), manufactured and supplied (*/ erected/ commissioned*)<sup>31</sup> **[Name of Requirement]**, with the same or higher specifications **[having/with – parameters<sup>32</sup>]** (hereinafter called ‘The Product’), and

(b) ‘The bidder’ should have manufactured and supplied (*/ erected/ commissioned*)<sup>31</sup> at least **[\_\_\_\_\_<sup>33</sup>]** numbers (herein after referred as ‘The Qualifying Quantity’) of ‘The Product’ in at least one of the last five years ending on ‘The relevant Date’, and out of which

(c) **(At least [one<sup>34</sup>] numbers of offered version/ model of ‘The product’ should be in successful operation for at least [two<sup>34</sup>] years on the date of bid opening.)<sup>31</sup>**

### **Criteria 2 - Capability- Equipment & manufacturing Facilities:**

‘The bidder’ must have an annual capacity to manufacture and supply (*/ erected/ commissioned*)<sup>31</sup> at least ‘The Qualifying Quantity’.

**Note :** In case of multiple products in a tender, this criterion shall be applicable product wise. For example, in case of Printing Paper of different specifications/ sizes, it shall be applicable to quantity of paper manufactured and supplied specification/ size wise.

### **Criteria 3 - Financial Standing – under all conditions**

(a) The average annual financial turnover of ‘The bidder’ during the last three years, ending on ‘The relevant Date’, should be at **Rs. [-----] millions****Error! Bookmark not defined.** (or equivalent in foreign currency at exchange rate prevalent on ‘The Relevant Date’) as per the annual report (audited balance sheet and profit & loss account) of the relevant period, duly authenticated by a Chartered Accountant in India or equivalent in relevant countries.

<sup>30</sup> Change number of years if needed

<sup>31</sup> Add text within bracket in case of Plant and Machinery only and delete for others

<sup>32</sup> Insert the defining parameters like Speed or defining technology here

<sup>33</sup> Fix the quantity as 40 – 80 % or any other % of the quantity in the Bid Documents rounded upto next whole number. In case of uncommonly large quantity procurements, a lower percentage would ensure that otherwise capable suppliers do not get ruled out. In case of smaller procurements, a higher percentage would ensure that low capability vendors do not vitiate competition.

<sup>34</sup> Fill up a reasonable number. In a new technology product, the Manufacturer is not likely to meet the requirements number of products or of number of years’ operating successfully; hence these can be reduced in such cases.

- (b) Bidder Firm (manufacturer or principal of authorised representative) should not have suffered any financial loss for more than one year during the last three years, ending on 'The Relevant Date'.
- (c) The net worth of the Bidder firm (manufacturer or principal of authorised representative) should not be negative on 'The Relevant Date' and also ii) should have not eroded by more than **30%** in the last three years, ending on 'The Relevant Date'.

Note: In case of Indian Bidders/ companies (manufacturer or principal of authorised representative) who have been restructured by Banks in India, under the statutory guidelines, they would be deemed to have qualified the Financial standing criteria considering the institutional financial backing available to them.

**Applicability in Special Cases:**

- (1) Applicability to 'Make in India'** :Bidders (manufacturer or principal of authorised representative) who have a valid/ approved ongoing 'Make in India' agreement/ program and who while meeting all other criteria above, except for any or more of sub-criteria in Experience and Past Performance above, would also be considered to be qualified provided:
  - i) their foreign 'Make-in-India' associates meets all the criteria above without exemption, and
  - ii) the Bidder submits appropriate documentary proof for a valid/ approved ongoing 'Make in India' agreement/ program.
  - iii) the bidder (manufacturer or principal of authorised representative) furnishes along with the bid a legally enforceable undertaking jointly executed by himself and such foreign Manufacturer for satisfactory manufacture, Supply (and erection, commissioning if applicable) and performance of 'The Product' offered including all warranty obligations as per the general and special conditions of contract.
- (2) Authorized Representatives:** Bids of bidders quoting as authorised representative of a principal manufacturer would also be considered to be qualified, provided:
  - i) their principal manufacturer meets all the criteria above without exemption, and
  - ii) the principal manufacturer furnishes a legally enforceable tender-specific authorisation in the prescribed form assuring full guarantee and warranty obligations as per the general and special conditions of contract; and
  - iii) the bidder himself should have been associated, as authorised representative of the same or other Principal Manufacturer for same set of services as in present bid (supply, installation, satisfactorily commissioning, after sales service as the case may be) for same or similar 'Product' for past three years ending on 'The Relevant Date'.
- (3) For Existing successful Past Suppliers:** In case the bidder (manufacturer or principal of authorised representative) who is a successful past supplier of 'The Product' in at least one of the recent past **[three]<sup>30</sup>** procurements , who do not meet any or more of requirements above, would also be considered to be qualified in view of their proven credentials, for the **maximum quantity supplied by him in such recent past**.
- (4) Joint Ventures and Holding Companies:** Credentials of the partners of Joint ventures cannot (repeat cannot) be clubbed for the purpose of compliance of PQC in supply of Goods/ Equipment, and each partner must comply with all the PQC criteria

independently. However for the purpose of qualifying the Financial Standing Criteria, the Financial Standing credentials of a Holding Company can be clubbed with only one of the fully owned subsidiary bidding company, with appropriate legal documents proving such ownership.

**NOTE FOR BIDDERS:**

(1) **'Doctrine of Substantial Compliance'**: The Pre-Qualification Bidding (PQB) and Pre-Qualification Criteria (PQC) are for shortlisting of sources who are competent to perform this contract to ensure best value for money from expenditure of Public Money. This process is neither intended to bestow any entitlement upon nor to create any rights or privileges for the Bidders, by way of overly hair-splitting or viciously legalistic interpretations of these criteria, disregarding the very rationale of the PQB and PQC. Keeping this caveat in view, interpretation by Procuring Entity would be based on common usage of terminologies and phrases in public procurement in accordance with the 'Doctrine of Substantial Compliance' and would be final.

(2) Along with all the necessary documents/ certificates required as per the tender conditions, the bidder should furnish a brief write-up, backed with adequate data, explaining his available capacity (both technical and financial), for manufacture and supply of the required goods/equipment, within the specified time of completion, after meeting all their current commitments.

(3) Supporting documents submitted by the bidder must be certified as follows:

(i) All copy of supply/work order; respective completion certificate and contact details of clients; documents issued by the relevant Industries Department/ National Small Industries Corporation (NSIC)/ manufacturing licence; annual report, etc., in support of experience, past performance and capacity/capability should be authenticated by the by the person authorised to sign the tender on behalf of the bidder. Original Documents must be submitted for inspection, if so demanded.

(ii) All financial standing data should be certified by certified accountants, for example, Chartered Accountants or equivalent in relevant countries; and Indian bidder or Indian counterparts of foreign bidders should furnish their Permanent Account Number.

**Note for Purchaser**

*Portions in italics are for your decision/ guidance; these are not to be printed in the bid documents. Portion within [ ] brackets are to be filled without brackets. Footnotes are for internal guidance and should not be part of the bid documents.*

## ***Annexure 10: Bid Opening Attendance Sheet cum Report***

(Refer Para 5.3)

**[Name of Procuring Entity]**

### **Bid Opening Attendance Sheet cum Report**

Attendance Record						
Sr No	Bidder's Name	Bidder's Address	Bidder's Authorisation and Date	Represented by	Contact No.	Signature of Representative

Bid Opening Report						
Tender No			Title			
Offer No.	Bidder's Name	Bidder's Ref and Date	Submission of other Requisite EMD (Y/N)	Submission of other Mandatory Documents (Y/N)	Rate Quoted and Taxes/ Duties	Signature of Representative
--/---						
--/--						
--/--						

Total no. of regular tenders taken out from the tender box to be opened as mentioned

above..... (in figures and in words)

Signature, Date and Time Name and Designation of Tender Opening Officer	Signature, Signature, Date and Time Name and Designation of Tender Opening Officer
--	---

Received total regular tenders..... (In figures/words) as above

Signature, Date and Time Name and Designation of Procuring Entity Officer	Signature, Signature, Date and Time Name and Designation of Procuring Entity Officer
--	---

## **Annexure 11: Tender Committee Minutes Format**

(For Techno-Commercial/Financial Bids)

(Refer Para 7.4.3 and 7.5.12)

<p><b>Organisation:</b> _____</p> <p style="text-align: center;"><b>Minutes of Tender Committee Meeting</b></p> <p style="text-align: center;">(Techno-commercial/Financial Bids)</p>																							
<p><b>Section I: Top Sheet</b></p>																							
File No:				Date:																			
Description				Estimated Cost:-																			
Tender Published In				Date of Publication																			
Bid Validity				Bid Opening Date																			
<p><b>Past Procurements</b></p> <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Supplier</th> <th>Order Reference &amp; Date</th> <th>Quantity</th> <th>Basic Rate (Rs.)</th> <th>Remarks</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>						Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (Rs.)	Remarks												
Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (Rs.)	Remarks																		
<p><b>Members of the Tender Committee</b></p> <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Name</th> <th>Designation</th> <th>Sr. No.</th> <th>Name</th> <th>Designation</th> </tr> </thead> <tbody> <tr> <td>1</td> <td></td> <td></td> <td>2</td> <td></td> <td></td> </tr> <tr> <td>3</td> <td></td> <td></td> <td>4</td> <td></td> <td></td> </tr> </tbody> </table>						Sr. No.	Name	Designation	Sr. No.	Name	Designation	1			2			3			4		
Sr. No.	Name	Designation	Sr. No.	Name	Designation																		
1			2																				
3			4																				
<p><b>Section II: Salient Feature of the Tender</b></p>																							
<p>Review background of indent; technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project</p>																							
<p>Review mode of bidding; bidding document contents; bid publication; level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.) and any other procurement of this requirement in process (at various stages)</p>																							
<p>Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)</p>																							
<p><b>Section III: Preliminary Evaluation</b></p>																							
<p>Review handling of any complaints received</p>																							
<p>Review/confirmation of quantity and period of delivery required</p>																							
<p>Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications</p>																							

<b>Section III: Evaluation of Responsive Bids</b>			
Bid-wise deliberation should be recorded			
<b>In case of evaluation of Financial Bids</b>			
<ol style="list-style-type: none"> <li>1) Start with review of techno-commercial evaluation</li> <li>2) Insert a summary table of evaluated price in the order of L1, L2, etc.</li> <li>3) Deliberations should be in the sequence of L1, L2, etc.</li> </ol>			
<b>Section IV: Summary of Recommendations</b>			
Bid-wise recommendation should be recorded			
<b>In case of evaluation of financial bids,</b>			
<ol style="list-style-type: none"> <li>a) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.</li> </ol>			
Also mention that the rates recommended are considered reasonable (and basis for such determination).			
Total value of the recommendations for determining level of acceptance authority.			
Mention that none of the TC members have any conflict of interest with the parties recommended for award.			
Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per SoPP/ DFPR.			
<b>Signature Name and Designation of the Members</b>			
1		2	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
3		4	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
<b>Remarks by the Accepting Authority:</b> _____			
Signature: _____ Date: _____			
<b>Name &amp; Designation of Accepting Authority</b> _____			

## **Annexure 12: Invitation and Declaration for Negotiations**

(Refer Para 7.5.7)

### **Invitation for Negotiations**

(On letterhead of the procuring entity)

No: \_\_\_\_\_

Dt: \_\_\_\_\_

To M/s \_\_\_\_\_

**Registered A/D**

Sub: **Tender No** ----- **opened on** ----- **for the supply of** -----

Dear Sir,

The rates quoted in your tender are considered high. You are therefore, requested to come for negotiations of rates, on..... (date) at..... (time) at..... (venue).

You should, however, come for negotiations only in case you are prepared to furnish before such date the declaration appended herewith.

A copy of the form in which you may submit your revised offer after negotiations is enclosed.

Yours faithfully,

Enclosure:

(Authorised Officer)

**(1) Form of Declaration**

**(2) Form of Revised Offer**

### **FORM OF DECLARATION**

(To be signed and submitted before start of negotiations)

(On company letterhead)

No: \_\_\_\_\_

Dt: \_\_\_\_\_

To \_\_\_\_\_

Sub: **Tender No** ----- **Opened on** ----- **for the supply of** -----

Ref: Your invitation for negotiations No: dated:

Dear Sir,

I \_\_\_\_\_ duly authorised on behalf of M/s. \_\_\_\_\_ do declare that in the event of failure of the contemplated negotiations relating to Tender No. \_\_\_\_\_ opened on \_\_\_\_\_ my original tender shall remain open for acceptance on its original terms and conditions.

Yours faithfully,

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Signatures of bidder, or officer authorised to sign the bid documents on behalf of the bidder

## ***Annexure 13: Format of Revised Offer in Negotiations***

(Refer Para 5.5.7)

### **Revised Offer in Negotiations**

(On company letterhead)

From.....

Full address.....

To .....

Sir,

Sub: **Tender No ----- opened on -----for the supply of -----**

Ref: Your invitation for negotiations no: dated:

1. On further discussions with your representatives on .....in response to your letter no ..... dated .....

We are not prepared to reduce the rates already quoted in the original tender, which will remain valid up to.....

Or

1. I / we reduce my/our rates as shown in the enclosed schedule of items.

2. I / we am/are aware that the provisions of the original bidding document remain valid and binding on me.

3. I/we undertake to execute the contract as per following Schedule.....

4. I/we agree to abide by this tender on the revised rate quoted by me/us, it is open for acceptance for a period of 120/180 days from this date, *i. e.*, up to ..... and in default of my/our doing so, I/we will forfeit the earnest money deposited with the original tender/ attached herewith. Eligibility as valid tenderers shall be deemed to be the consideration for the said forfeiture.

Yours faithfully,

Signatures of bidder or  
officer authorised to sign the bid  
documents on behalf of the bidder

***Annexure 14: Letter (Notification) of Award (LOA) of Contract***

(Refer Para 7.6.1)

Name of the procuring entity \_\_\_\_\_

**Letter of Award of Contract**

**Confidential**

Contract No: [Insert date]

Contract Title:

To,

M/s. [Insert name & address]

Sub: Award of contract for contract no: [insert contract number] and contract title: [insert contract title]

REF. Your offer no. [insert offer number] against our tender no. [insert tender no] opened on [insert date of opening of tender]

Dear Sir/ Madam

I am directed to inform you that after evaluating the bid documents submitted by you on [enter date] Government of India is pleased to inform you that you have been selected as the successful bidder for the supply of [enter description]. The total purchase price shall be [enter amount] as indicated in your financial bid submitted on [enter date], in accordance with the procedures intimated in the relevant bid documents.

You/your authorised representative(s) are requested to be personally present at [insert address] for the signing of the contract by [enter date].

In this respect, we also request you to submit the performance security of [insert amount of Rupees in words] by [insert date]. Security deposit being 10% of the total cost = Rs. \_\_\_\_\_.

Please apply for refund of EMD deposited over and above the SD of if any.

You are requested to execute necessary agreement within 7 days from the date of issue of this letter in the enclosed agreement form. Special adhesive stamp of Rs.10 and revenue stamp of Re. 1 shall be affixed on the enclosed agreement form. Treasury receipts of EMD and SD shall be deposited in office within the stipulated time limit as above.

This notification concludes the legally binding contract between you and the Government of India, till issue of a formal contract.

Yours truly,  
[Authorised Officer]

Enclosure: Agreement Form along with the schedule of delivery

## **Annexure15: Example of Formula for Price Variation Clause**

(Refer Para 6.6)

*(The formula for price variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element and profits and is not subject to variation. The portions of the price represented by the material element and labour element along will attract price variation.)*

The formula for price variation will thus be:-

$$P_a = P_o \left( F + a \left( \frac{M_1}{M_o} \right) + b \left( \frac{L_1}{L_o} \right) \right) / 100 - P_o$$

Where: -

$P_a$  is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the contract price) on the date of supply.

$P_o$  is the contract price on the base date (which is taken as the date on which tender is due to open).

$F$  is the fixed element (as the percentage of the total price) not subject to price variation.

$a$  is the assigned percentage to the material element in the contract price.

$b$  is the assigned percentage to the labour element in the contract price.

( $F$ ,  $a$  and  $b$  being percentages should total 100)

$L_o$  and  $L_1$  are the average wage indices for the quarter before the quarter in which base month falls and for the quarter before the quarter in which date of supply falls; respectively. For example for a tender opening on March 17, 2016 (base date),  $L_o$  would be average wage index for the quarter of Oct-Dec 2015.

$M_o$  and  $M_1$  are the material prices/indices as average of the month, two month prior to the month in which base month falls and average of the month, two month prior to the month in which date of supply falls, respectively. For example, for a tender opening on March 17, 2016 (base date),  $M_o$  would be prices/index as average of the month of January 2016. All material prices/indices will be basic prices without excise duty and without any other central, state, local taxes and duties and Octroi.

If more than one major item of material is involved, the material element can be broken up into two or three components such as  $M_x$ ,  $M_y$ ,  $M_z$ .

The following conditions would be applicable to price adjustment:

- Base dates shall be due dates of opening of bids (technical bid in 2/3 envelop/cover system).
- Date of supply shall be the date of calculation/determination of the price variation.
- No price increase is allowed beyond original delivery period.
- No price adjustment shall be payable on the portion of contract price paid to the seller as an advance/interim payment after the date of such payment.
- Total adjustment will be subject to maximum ceiling of \_\_\_\_%.

- No price adjustment shall be payable if this is less than or equal to 2% of Po.
- Payments for each supply would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the supplies made during the quarter.
- In GTE tenders extra care should be taken in selecting the price indices. Preferably the price indices should be from the same country and of same currency as the country and currency of the bidder. In case price is in a currency of a country where inflation is low and the indices are from country with much higher inflation rates,  $\left(\frac{M_1}{M_0}\right)$  and  $\left(\frac{L_1}{L_0}\right)$  should be multiplied by a correction factor of exchange rates  $\left(\frac{E_0}{E_1}\right)$ , where  $E_0$  is the exchange rate of country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in \$, then  $E_0$  is Number of Rs. in a \$ on base date and  $E_1$  is the exchange rate on determination date.
- Even if there is no price adjustment claim, supplier must submit all relevant data to prove that there is no downward variation. In any case he must submit a declaration as follows;

*"It is certified that there has been no decrease in the price of price variation indices and in the event of any decrease of such indices during the currency of this contract we shall promptly notify the same to the purchaser and offer requisite reduction in the contract rate."*

## ***Annexure 16: Incoterms***

(Refer Para 6.9)

## ***Annexure 17: Progress of Supply Order Register***

(Refer Para 9.6)

### ***Progress of Supply Order Register***

Sr. No.	Supply Order No. and Date	Brief Description of Material	Name of the Supplier & Registration No.	Quantity & Due Date of Delivery		Quantity & Actual Date of Delivery		Whether Delay was Attributable to the Supplier or Procuring Entity?	Whether Penalty is Imposed or not?	Status of Security Deposit	Remarks
				Qty,	Date	Qty,	Date				
1	2	3	4	5	6	7	8	9	10	11	12

**Office Superintendent**

**Procuring Officer**

Note:

- 1) The register will be reviewed and signed by Head of Office every month.
- 2) A summary will be prepared and submitted to HOD every quarterly.

## ***Annexure 18: Proposal for Extension of Delivery Period***

(Refer Para 9.7.4)

### **Proposal for Extension of Delivery Period**

Department		Office	
Description		Contract value	
Contract No:		Date:	
Variations applicable	PVC/ ERV/ Statutory Variations	Type of contractor	Govt. Dept. / PSU/ MSE
Contractor & Regn. No.:		Quantity on order	
Quantity already supplied		Quantity remaining	
Details of earlier extensions granted		Is it a contract:	Development/ Indigenisation
Reference and date of request for extension		Reasons cited for extension	
Original/extended delivery period/ date		Proposed extension of period/ date	
Signature of Procuring Officer		Date	

#### **Remarks of Indenter:**

Regarding the proposed extension of delivery period/date, the following remarks are given regarding loss and inconvenience due to delay:

**Loss:** (strike out options not applicable): No loss would be incurred/ loss is incurred but cannot be quantified/ loss to the extent of Rs. ----- would be incurred

**Inconvenience:** (strike out what is not applicable): No inconvenience would be incurred/inconvenience would be incurred

Proposed extension in delivery is recommended with above remarks.

Signature of Indenting Officer and Date

#### **Proposal by Procuring Entity**

It is certified that:

- a) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery;
- e) That there is no falling trend in prices for this item as evidenced from the fact that in the intervening period neither orders have been placed at rates lower than this contract nor any tender has been opened where such rates have been received even though tender is not yet decided.

It is proposed to grant extension of delivery period/date up to \_\_\_\_\_, (strike out options not applicable) with recovery of liquidated damages/ with recovery of token liquidated damages/ without any liquidated damages and with/without denial clause, in view of justifications recorded below:

-----  
-----

In view of value of the contract and proposal regarding liquidated damages, this would require approval of ----- (competent authority). This would/ would not require financial concurrence.

Signature of Procuring Officer and Date

Head of Office recommendations/approval

Signature of Superintending Engineer/date

## ***Annexure 19: Format for Extension of Delivery Period/***

### ***Performance Notice***

(Refer Para 9.7.4, 9.7.6 and 9.7.8)

**Registered A/D  
or Speed Post**

Name of the Procuring Entity \_\_\_\_\_

#### **Extension of Delivery Period/Performance Notice**

To M/s (name and address of firm)

**Sub: Contract No ----- dated -----for the supply of -----**

**Ref: Your letter no. ----- dated: -----**

Dear Sir,

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In your letter under reply you have asked for [further] extension of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from (fill in date) to (fill in date)
2. Please note that notwithstanding the grant of this extension in terms of Clause (fill in clause number) of the subject contract an amount equivalent to.....% (.....per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable), viz., (fill in date) will be recovered from you as liquidated damages. You may now tender the Stores for inspection [balance of the Stores] in terms of this letter. Stores if any already tendered by you for inspection but not inspected will be now inspected accordingly.
3. You are also required to extend the validity period of the performance guarantee for the subject contract from (fill in present validity date) to (fill in required extended date) within 15 days of issue of this amendment letter.
4. The above extension of delivery date will also be subject to the following Denial Clause.
  - i) That no increases in price on account of any statutory increase in or fresh Imposition of customs duty, excise duty, Sales Tax, CST, VAT or on account of any other taxes/duty, including custom duty), leviable in respect of the Stores specified in the said contract which takes place after (insert the original delivery date) shall be admissible on such of the said Stores, as are delivered after the said date; and.
  - ii) That notwithstanding any stipulation in the contract for increase in price on any other ground including foreign exchange rate variation, no such increase which takes place after (insert the original delivery date) shall be admissible on such of the said Stores as are delivered after the said date.
  - iii) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, Sales Tax, VAT/ CST or on account of any other Tax or duty or on any other ground as stipulated in the price variation

clause or foreign exchange rate variation which takes place after the expiry of the above mentioned date namely (insert the original delivery date)

5. All other terms and conditions of the contract remain unaltered. This is without any prejudice to purchasers' rights under the terms and conditions of the subject contract.

6. Please intimate your unconditional acceptance of this amendment letter within 10 days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

Yours faithfully,  
(Authorised Officer)  
Duly authorised, for and on behalf of  
The President of India

*Note: Select one option within { } brackets; delete portion within [ ] brackets, if not applicable; fill in ( ) brackets. Brackets and this note are not to be typed.*

*Substitute following first para instead of first para in format above, for issuing a performance notice.*

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that (fill in the outstanding quantity) are still outstanding even though the date of delivery has expired. Although not bound to do so, the time for delivery is extended from (fill in date) to (fill in date) and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risk and cost.

***Annexure 20: Model Format for Correspondence with Supplier  
after Expiry of Delivery Date***

(Ref Para 9.8)

*Registered Acknowledgement Due*

To

M/s \_\_\_\_\_

Sub : Contract No..... dated ..... for supply of

Dear Sirs,

The date of delivery of the subject contract expired on \_\_\_\_\_. As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies against this contract, you are requested to send the particulars regarding the quantity so far supplied and, also, the quantity so far inspected but not yet dispatched and the quantity ready but so far not tendered for inspection before the expiry of the date of delivery.

The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach. This is without prejudice to the rights and remedies available to the purchaser in terms of the contract and law applicable in this behalf.

Yours faithfully,

(-----)

for.....

***Annexure 21: No Claim Certificate***

(Refer Para 9.5 and 9.10)

(On company letterhead)

To,

(Contract Executing Officer)

Procuring Entity \_\_\_\_\_

**NO CLAIM CERTIFICATE**

Sub: Contract Agreement no. ----- dated ----- for the supply of -----

We have received the sum of Rs. (Rupees \_\_\_\_\_ only) in full and final settlement of all the payments due to us for the supply of \_\_\_\_\_

under the abovementioned contract agreement, between us and Government of India. We hereby unconditionally, and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against Procuring Entity, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Signatures of contractor or

officer authorised to sign the contract documents

on behalf of the contractor

(company stamp)

Date: \_\_\_\_\_

Place: \_\_\_\_\_

## **Annexure 22: Goods Receipt and Inspection Report**

(Refer Para 9.14.1)

Purchase Order No.		RR/GC No. & Date		Procuring Entity _____
Name of Supplier M/s.		Date of Clearance from Transporter		<b>GOODS RECEIPT AND INSPECTION REPORT</b>
Indenter.		Date of Inspection and Acceptance/Rejection		<b>ACCEPTANCE/ REJECTION</b>
Materials procured for Project/ Scheme		Earlier GRIR No. for Part Supply		GRIR No.
Allocation		Code No.		Date

Nos	Description of Materials	Code No.	Invoice No.	Qty. as per S.O.	Qty. Recd.	Qty. Inspected		Rate Unit		Amount		Incidental Charges			Total Amount		Issue Rate.	
						Accept- ed	Reje- cted	Rs.	P.	Rs.	P.	Labour	Freight	Over heads	Rs.	P.	Rs.	P.

Copy To FA	Reason for not accepting the material															
Indenting Officer		Inspected										Received above material of correct quantity and Quality				
Procuring Officer																
Book-Keeping	Inspector Tpt Clearance	inspecting Officer										Indenting Officer				
Inspecting Officer												(Not below the Rank of Supervisor)				

In case of rejected quantity: replacement required/not required \_\_\_\_\_. Rejected materials of local firms will normally be delivered at the designated consignee. Firms are required to arrange collection within 14 days from the date of rejection failing which Procuring Entity's responsibility will cease and after that time they will remain at supplier's entire risk and if not removed before a further period of 7 days, Procuring Entity shall have the right to dispose of such stores as deemed fit at the supplier's risk and account without further reference to them and to recover thereafter from the supplier's as ground rent or demurrage at the rate of Rs.....per day for consignments occupying less than 0.2 cubic meters, or 50 kilograms in weight and up to Rs..... per day for articles bulkier or heavier than above. Rejected materials of firm from outstation if not removed within 21 days of the rejection will be dispatched to them by goods train freight to pay at public tariff rate. FA may please recover any advance payment or freight charges paid for such rejected quantity.

## ***Annexure 23: Pay Order Form***

(Refer Para 9.14.2)

### **Pay Order Form**

Name of Procuring Entity \_\_\_\_\_

Indenter

Sub-office

Allocation

Name of work

Estimate No., etc.

Name of the Supplier

P.O No. & Date, etc.

Whether full payment or part payment

Ref. to GRIR No. Page No., etc.

No. of enclosures (Sub- voucher etc.)

Ref. to Materials at Site A/c

Consumable Register Page/Item No.

Sr. No.	Particulars	Ref. to Item No. of PO	Qty.	Unit	Rate	Amount

#### **Certificate:-**

- 1 Certified that the materials have been received on \_\_\_\_\_ in accordance with the specifications of the PO and good condition.
- 2 Certified that the terms and conditions prescribed in the PO have been duly observed by the supplier and payment can be made in full (other certificates where necessary may be given on reverse)

Passed for Rs. \_\_\_\_\_

Office Superintendent (\_\_\_\_\_) Accounts Officer (\_\_\_\_\_) Head of Office  
(\_\_\_\_\_)

Passed for Payment of Rs. \_\_\_\_\_ Rupees \_\_\_\_\_

Pay Rs. \_\_\_\_\_ Rupees \_\_\_\_\_  
Auditor (\_\_\_\_\_) D A / Supdt, (\_\_\_\_\_) AAO (\_\_\_\_\_)

Bill paid/cheque issued No. \_\_\_\_\_ Date \_\_\_\_\_ CBI No. \_\_\_\_\_  
Cashier (\_\_\_\_\_)

## ***Annexure 24: Survey Committee's Report***

(Refer Para 10.3.2)

Name of the Organisation \_\_\_\_\_

### ***SURVEY COMMITTEES REPORT***

Report Reference No:												Date:		
Sr No.	Code No.	Description of Stores	Quantity		Book Value			Total Est Scrap Value	Total Est Loss	User Dept.	Reason of Survey	Recommendation of Survey Committee	Remarks by the Competent Authority	
			No.	Wt.	Rate	Unit	Amount							
1	2	3	4	5	6	7	8	9	10	11	12	13	14	
(Signature)				(Signature)					(Signature)					
Committee Member Designation				Committee Member Designation					Committee Member Designation					
Date and Place:														
Signature														
Competent Authority														

***Annexure 25: Sale Account for Goods Disposed***

(Refer Para 10.10.9)

Name of the Organisation \_\_\_\_\_

***Sale Account for Goods Disposed***

Lot No.	Particulars of Stores	Quantity/ Weight	Name and Full Address of Purchaser	Highest Bid Accepted (Name of bidder & bid value)	Amount and Date Earnest Money/ Security Deposit Realised	Amount & Date on which the Complete Amount is Realised and Credited with Cashier and Reference thereof	The Actual Date of Handing over of the Articles with Quantities with reference of Issue Notes and Gate pass	Signatures of the Purchaser	eAuction Service Provider's Commission and Acknowledgement for its Payment	Book Value	Profit/ Loss w.r.t Book Value
(Signature)		(Signature)				(Signature)					
Auction Disposal Officer		Accounts Representative				Security Staff					

***Annexure 26: List of Handloom Items Notified for Purchase  
from KVIC/ ACASH***

*Ministry of Textiles O. M. No. 4/2/88-DCH/M & E dated 17th February 1992*

*Taken from website: [http://handlooms.nic.in/User\\_Panel/UserView.aspx?TypeID=1199](http://handlooms.nic.in/User_Panel/UserView.aspx?TypeID=1199)*

TITLE	IS
<b>COTTON-HANLOOM</b>	
Angacastam	7216 -1974
Bandage cloth	863 -1969
Bed dutties	1557 -1972
Bed sheets	745-1975
Bleeding Madras, loom state.	1937-1961
Buckram cloth	1102-1968
Bunting cloth dyed	747-1982
Calico, bleached or dyed	1241-1958
Cambric, bleached	1098-1957
Cellular shirting, handloom cotton	1101-1981
Cloth for plaster of paris bandages and cut bandages	6237-1971
Coating, handloom cotton	1243-1981
Colour fastness of handloom cotton textiles, requirements	6906-1982
Crepe	1100-1978
Dhoties	748-1974
Dosuti Grey, scoured, bleached or dyed	756-1984
Dress material, bleached, dyed printed or striped or checked	1095-1957
Drills	1451-1979
Dungri cloth	749-1978
Dustors	859 -1978
Floor durries	1450 -1972
Gada cloth	1094 -1976
Gause, absorbent, non-sterilized, handloom cotton	758-1975
Handkerchiefs	1939-1975
Holland cloth, unsecured	1096-1957

Honeycomb towels and towelling cloth	855-1979
Huckaback towels	856-1971
Jaconet cloth, grey, dressed	86-1982
Light sheeting, grey	864-1956
Lining cloth, dyed	1099-1957
Lint, absorbent, bleached	757-1971
Longcloth, bleached or dyed	1244-1958
Lungies	750-1976
Madras check	1247-1958
Madras handkerchiefs. Handloom cotton	1093-1981
Malnal bleached	755-1984
Mazricloth (loomstate)	751-1984
Mixs	8039-1976
Moots striped or checked	1814-1961
Mosquito netting	1097-1979
Muslin, bleached	752 -1984
Nainseek, bleached or dyed	1240-1958
Napkins, bleached, striped, cheeked or dyed	857 -1956
Poplin, bleached or dyed	1556 -1960
Poplin cloth bleached or dyed	753-1983
Pyjamma cloth, grey, with stripes	1245-1958.
Saries	754-1974.
School uniform fabric	797-1971
Shirting	1242-1975
Sponge cloth, grey, striped and checked	860-1956
Table cloth and napkins, handloom cotton	858-1981
Ticking cloth, grey, striped	862-1956
Turkish towels and towelling cloth handloom cotton	854-1981
Twills	1579-1979
<b>SILK-HANDLOOM</b>	
Bush Shirt cloth, Loomstate	1686-1960
Dhotis, Loomstate	1583-1960
Kora (loomstate) cloth	1687-1960
Shirting, loomstate	1584-1960
<b>WOOL-HANDLOOM</b>	

Blanketing cloth	895-1957
Blanket, scarlet	2901 -1964
Blankets, natural grey brown	892-1980
Blankets, ordinary, plain or check	893 -1957
Blankets, shoddy (double faced)	2157 -1962
Blankets, shoddy (single faced)	2481-1963
Blankets, brick red	894 -1980
Bunting cloth, worsted, heavy	889 -1957
Bunting cloth, worsted, light	890-1957
Cloth, collar, white	2715 -1964
Kamblies, foomstate	896-1957
Lohis, worsted	1268 -1958
Melton (shoddy) cloth	2173-1962
Serge	1266-1958
Shirting worsted	891-1957
Pile Fabrics	2714 -1964

The following items shall be procured on the basis of samples approved by purchaser, mutually agreed specifications.

1. Khes
2. Bed cover
3. Counter pane
4. Furnishing
5. Chaddar
6. Durrets/Jamakkalam
7. Bastha cloth
8. Lowreed pick cloth
9. Silk Sarees
10. Shawls, Mufflers, Pankhis
11. Woolen tweed.

***Annexure 27: List of Medicines Reserved for procurement from  
Pharma CPSEs***

SI No.	CAPSULES
1.	AMOXYCILLIN IP
2.	AMOXYCILLIN IP + CLOXACILLIN IP
3.	AMPICILIN IP
4.	B-COMPLEX + VIT.- C & ZINC
5.	CEPHALEXIN IP
6.	DOXYCYCLINE IP
7.	FLUCONAZOL
8.	OMEPRAZOLE IP
9.	OMEPRAZOLE+DOMPERIDO NE
10.	CEFADROXIL
11.	TETRACYCLINE
TABLETS	
12.	ACECLOFENAC + PARACETAMOL
13.	ACECLOFENAC 100 MG
14.	ALBENDAZOLE
15.	AMLODEPIN
16.	AMOXYCILLIN+CLAVULANIC ACID
17.	ASCORBIC ACID IP
18.	ATENOLO
19.	ATROVASTATIN
20.	AZITHRO MYCIN
21.	CALCIUM+VITAMIN D3
22.	CEFIXIME TABS/CAPS
23.	CEFPODOXIME PROXETIL
24.	CEFUROXIME AXETIL
25.	CETRIZINE HCL BP
26.	CETRIZINE+PARACETAMOL+PHENYL EPERIN
27.	CHLOROQUINE PHOSPHATE IP
28.	CIPROFLOXACIN+TINIDAZOLE
29.	CIPROLOXACIN IP
30.	CO-TRIMOXAZOLE IP
31.	DICLOFENAC SODIUM
32.	DICYLOMINE+PARACETAMOL
33.	DOMPERIDONE
34.	ERYTHRO MYCIN STERATE IP
35.	IBUPROFEN IP
36.	LEVOCETRIZINE
37.	LEVOFLOXAACIN
38.	LOSARTAN
39.	METRONIDAZOLE IP
40.	NIMESULIDE
41.	NORFLOXACIN+TINIDAZOLE
42.	NORFLOXACIN IP
43.	OFLOXACIN
44.	OFLOXACIN+ORNIDAZOLE
45.	ORAL CONTRACEPTIVE PILLS
46.	PANTOPRAZOLE
47.	PARACETAMOL

48.	PARACETAMOL IP+DICLOFENAC SODIUM
49.	PARACETAMOL+IBUPROFEN
50.	PENICILLIN V
51.	POLY VITAMIN PROPHYLACTIC (NFI)
52.	RANITIDINE HCL IP
53.	ROXITHRO MYCIN
54.	METFORMIN
55.	SPARFLOXACIN
56.	TINIDAZOLE
57.	VITAMINE B-COMPLEX
	<b>SUSPENSIONS/ SYRUPS</b>
58.	ALBENDAZOLE SUSP.
59.	AMOXYCILLIN DRY SYP.
60.	CETRIZINE SYRUP
61.	COTRIMOXAZOLE SUSP.
62.	COUGH SYP. EACH 5 ML CONTAINS-CPM IP : 3MG+AMMONIUM CHLORIDE IP: 110MG+SODIUM CITRATE IP : 4SMG+MENTHOL IP: 9MG
63.	COUGH SYP. EACH 5ML CONTAINS- DYPHENHYDRAMINE HCL:14MG+AMMONIUM CHLORIDE IP: 135MG+SODIUM CITRATE IP: 57MG+MENTHOL IP: 9MG
64.	DOMPERIDONE SUSP.
65.	PRACETAMOL SYP.
66.	VITAMIN A SOLUTION IP
	<b>ORAL POWDERS</b>
67.	ORAL REHYDRATION SALT (WHO FORMULA)
	<b>EXTERNAL LOTIONS/ SOLUTIONS</b>
68.	GLUTARALDEHYDE
69.	CHLORHEXIDINE GLUCONATE SOLUTION
	<b>OINTMENTS</b>
70.	CLOTRIMAZOLE OINTMENT
71.	DICLOFENAC GEL
72.	POVIDONE IODINE SOLUTION/OINTMENT
73.	SILVER SULPHADIAZINE
	<b>I.V. FLUIDS (INFUSION)</b>
74.	CIPROFLOXACIN
75.	LEVOFLOXACIN IV
76.	MANNITOL
77.	METRONIDAZOLE
78.	PLAZMA VOLUME EXPENDER
79.	RINGER LACTATE I.V.
	<b>DRY POWDERS/ LIQUID INJECTIONS</b>
80.	AMIKACIN
81.	AMOXICILLIN SODIUM+CLAVULA NATE POTASSIUM
82.	AMPICILLIN IP
83.	AVS LIQUID (LYFOLYSED)
84.	BENZATHENE PENICILLIN IP
85.	BENZYLE PENICILLIN IP
86.	CEFEPIME
87.	CEFOPERAZONE
88.	CEFOPERAZONE+SULBACTAM
89.	CEFOTAXIME SODIUM USP
90.	CEFOTAXIME SODIUM+SULBACTAM
91.	CEFTAZADIME
92.	CEFTRIAXONE
93.	CEFTRAXONE+SULBACTAM

94.	DICLOFENAC SODIUM
95.	ETO-THEOPHYLLINE
96.	ATROPIN INJ.
97.	FRUSEMIDE
98.	GENTAMYCIN IP
99.	MEROPENEM INJ.
100.	PENTAZOCIN
101.	PIPERACILLIN+TAZOBACTAM
102.	RANITIDINE IP
	<b>TABLETS</b>
103.	GLIMEPIRIDE (1MG/2MG)

## ***Annexure 28: DMEP Preferred Market Access Policy - Examples***

### **Example 1**

#### **Procurement of 1 lakh Laptops**

Under a Government project, it is intended to procure 100,000 laptops, notified under the policy. In order to fulfil the norm of the proposed policy, they have to procure 30,000 laptops (30%) from domestic manufacturer. The bid documents should specifically provide preference to domestically manufactured electronic products in terms of 30% of procurement value subject to matching of L 1 price and on satisfying technical specifications of the tender. Suppose there are five bids. Consider OM as Domestic Manufacturer and NDM as Non Domestic Manufacturer.

**Case 1:** After opening of commercial bids, position is like L 1: DM1, L2: NDM1, L3: NDM2, L4: NDM3 and L5: DM2. Then the entire quantity shall be awarded to DM1.

**Case 2A:** After opening of commercial bids, position is like L 1: NDM1, L2: NDM2, L3: NDM3, L4: DM1 and L5: DM2. NDM1 qualifies as L 1, and DM1 is the lowest-priced domestic manufacturer. Then NDM1 shall be given purchase order for 70% and 30% of the purchase order shall be given to DM1, subject to the later matching the L 1 price.

**Case 2B:** If DM1 declines to undertake the tendered work at L 1 price, DM2 should be given the offer to supply the 30% at L 1 prices.

**Case 3:** After opening of commercial bids, position is like L 1: NDM1, L2: NDM2, L3: NDM3, L4: NDM4 and L5: NDM5. In this case, no domestic electronic product manufacturer is available; hence the full order will be awarded to NDM1.

### **Example 2**

#### **Procurement of Super Computer**

Procuring Entity desires to procure a Super Computer with prescribed specification for Rs. 50 crore. The order cannot be split between two parties. The Procuring Entity is not able to apply 70:30 norms. Hence this policy cannot be implemented in this tender. Therefore, in subsequent procurement of electronic products by the said agency, it should reserve an additional value of Rs. 15 crore (30% of the value of the earlier tender) for domestic manufactured electronic products.

***For Official Use Only***

***Department of Expenditure, Ministry of Finance, Government  
of India***

***Manual on Policies and Procedures***

***For Procurement of Goods***

***Beta Draft***

# ***APPENDICES FOR INFORMATION ONLY***

***Procurement Policy Division***

***15-Aug-16***



## ***Appendix 1: Advanced Concepts of Value for Money***

### **1.0 The Concept of Value**

Value is a management and economics concept. It represents the extent of satiation of a hierarchy of needs of a person by a product bought for this purpose. This is subjective and difficult to quantify. This is because different persons (or the same persons under different circumstances) would have different hierarchy of needs and would perceive different extents of satiation or value from the same product. There are three sources of the value of a product. The first source of value is from the functional usage of the product (known as use value) and the second source comes from the social status associated with the ownership of the product (esteem value). This can be shown as the difference between a luxury branded gold-plated, diamond encrusted pen and a disposable non-descript functional pen, though both fulfil the broadly same function and have the same use value. The luxury branded pen, in addition to the use value, also has additional esteem value. The third source of value comes from the price that one can get by exchanging or scrapping the product at the end of the useful life of the product. This is called the disposal value. Normally, when people buy a car, they do consider the estimated disposal value of different choices of models. Value is the sum total of all the three values.

### **2.0 Total Cost of Ownership**

While the value of a product covers all components of value over the “Whole-Of-Life” (WOL), the costs incurred on the product should also take into consideration the total of various elements of costs incurred over WOL of the product. For this purpose, future costs are discounted to present value (not to be confused with the value we are discussing – this is a financial discounting concept). For example, it would not be prudent to buy a cheap car, which has a very high cost of operating. This is called variously as WOL or “Life-Time-Cost” or “Total Cost of Ownership”. The last is a preferred nomenclature in procurement and is defined as the total of all costs associated with a product, service, or capital equipment that are incurred over its expected life. Typically, these costs can be broken into four broad categories:

- a) Procurement price.* The amount paid to the vendor/ contractor for the product, service, or capital equipment;

- b) **Acquisition costs.** All costs associated with bringing the product, service, or capital equipment into operation at the customer's location. Examples of acquisition costs are sourcing, administration, freight, taxes, and so on;
- c) **Usage costs.** In the case of a product, all costs associated with converting the procured part/material into the finished product and supporting it through its usable life. In the case of a service, all costs associated with the performance of the service that is not included in the procurement price. In the case of capital equipment, all costs associated with operating the equipment through its life. Examples of usage costs are inventory, conversion, wastage, lost productivity, lost sales, warranty, installation, training, downtime, and so on; and
- d) **End-of-life costs.** All costs incurred when a product, service, or capital equipment reaches the end of its usable life, net of amounts received from the sale of the remaining product or the equipment (disposal value) as the case may be. Examples of end-of-life costs are obsolescence, disposal, clean-up, and project termination costs

### 3.0 Value for Money

Besides value of a product or service, the customer also has his own notion of “value” of a particular sum of money. This is different for different people or even for the same person in different circumstances. When the perceived value of a product matches the perceived value of the amount of money (cost of the product), the customer feels he got the full value for his money. This is called the VfM. In procurement, Total Cost of Ownership is taken to evaluate value for money. Given the limited resources available to the government, ensuring VfM in procurement is the key to ensuring the optimum utilisation of scarce budgetary resources. It usually means buying the product or service with the lowest WOL costs that is ‘fit for purpose’ and just meets the specification. VfM also incorporates affordability; clearly, goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the need assessment stage before procurement commences. In order to address this issue, a change in the procurement approach, specification or business strategy may be required.

Where an alternative is chosen that does not have the lowest WOL costs, then the additional ‘value added’ benefit must be proportional and objectively justifiable. Assessment of bids should be conducted only in relation to a published set of evaluation criteria (which should be relevant to the subject of the contract), and any ‘added value’ that justifies a higher price must flow from these defined criteria. In public procurement VfM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VfM outcome. However,

where competition is limited, or even absent, other routes may have to be used to establish VfM. These can include benchmarking, construction of theoretical cost models or 'shadow' bids by the procurement agency. For major contracts, this can require considerable financial expertise and external support. A VfM assessment, based on the published conditions for participation and evaluation, may include consideration of some factors such as:

- a) Fitness for purpose;
- b) Potential vendor/contractor's experience and performance history;
- c) Flexibility (including innovation and adaptability over the lifecycle of the procurement);
- d) Environmental sustainability (such as energy efficiency and environmental impact); and
- e) Total cost of ownership

But due to uncertainties in estimates of various components of TCO (and actual costs over the life-cycle) and intangibles of Value, some element of subjectivity may become unavoidable, and hence is not normally useable in routine Public Procurement cases. Therefore preference is given to alternative means for ensuring VfM by way of optimal description of needs; development of value-engineered specifications/ Terms of Reference and appropriate packaging/ slicing of requirements and selection of appropriate mode/ bidding systems of procurement etc.



## **Appendix- 2: Legal Aspects of Public Procurement**

### **1.0 Relevant Provisions of the Constitution of India**

#### **1.1 Equality for Bidders**

Article 19 (1) (g) of the Constitution of India (under Part III – ‘Fundamental Rights’) grants all its citizens the right “to practise any profession or to carry out any occupation, trade or business”. This has been interpreted by courts in a way so as to ensure that every citizen of India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does not permit stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus a public procurement organisation should be ready to prove in court that no eligible bidder has been denied reasonable and equal opportunity under this article to bid and be considered for the concerned contract.

#### **1.2 Persons Authorised to Make and Execute Contracts on Behalf of Governments**

As per Article 299 (Part XII – Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state governments are to be entered into and executed by authorised persons on behalf of the President of India or Governor of the state, respectively. The President of India, Governor of

“Part III - FUNDAMENTAL RIGHTS - Right to Freedom

§19 Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right-  
(a) to freedom of speech and expression;  
(b) to assemble peaceably and without arms;  
(c) to form associations or unions;  
(d) to move freely throughout the territory of India;  
(e) to reside and settle in any part of the territory of India; [and]  
(g) to practise any profession, or to carry on any occupation, trade or business.”

“Part XII. - Finance, Property, Contracts and Suits

§299 Contracts:

All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.”

the state and the authorised persons who enter into or execute such contracts are granted immunity from personal liability under this article. That is why, above the signatures of such persons, on the contract documents, a legal phrase “For and on Behalf of the President of India/the Governor of State” is written to signify this fact. In a state government, the persons who are authorised to do so are listed in the DFPR. Provisions of DFPR are expanded upon by various departments by issuing SOPs. Rule 203, Chapter 8: Contract Management of the GFR covers this aspect also

### **1.3 *Other Mercantile Laws***

A procurement contract besides being a commercial transaction is also a legal transaction. There are a number of commercial/mercantile laws that are applicable equally to the private sector and public procurement, such as the Indian Contract Act, Sales of Goods Act, Arbitration and Conciliation Act, and so on. Although a public procurement professional is expected to have a working knowledge of the following basic laws relating to procurement, yet he is not expected to be a legal expert. If standard contract forms are used, the procurement official can discharge his normal functions without frequent legal help. In case any complex legal issue arises, or a complex contract beyond the standard contract form is to be drafted, an appropriate legal professional may be associated with the procurement from an early stage.

Salient features of these mercantile laws relating to Procurement are summarised below.

## **2.0 *Salient Features of the Indian Contract Act***

### **2.1 *Legal Aspects Governing Public Procurement of Goods - Introduction***

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting procurement of goods; however, he or she is not expected to be a legal expert. Where appropriate in complex cases, legal advice may be obtained. In other categories of procurement, additional set of laws may be relevant:

- a) The Constitution of India;
- b) Indian Contracts Act, 1872;
- c) Sale of Goods Act, 1930;
- d) Arbitration and Conciliation Act, 1996 read with the Arbitration and Conciliation (Amendment) Act, 2015;
- e) Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
- f) Micro, Small and Medium Enterprises Development (MSME Development) Act, 2006;

- g) Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law);
- h) Right to Information (RTI) Act 2005;
- i) Central Vigilance Commission Act, 2003;
- j) Delhi Special Police Establishment Act, 1946 (basis of the Central Bureau of Investigation);
- k) Prevention of Corruption Act, 1988;
- l) The Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy (EXIM Policy), 2015; Foreign Exchange Management Act (FEMA), 1999 and FEMA (Current Account Transactions) Rules, 2000.

The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. Some of the salient principles relating to contracts are set out briefly in this chapter.

## ***2.2 Elementary Legal Practices***

**2.2.1 What is a Contract?** The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement, and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

**2.2.2 Proposal or Offer:** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.

**2.2.3 Acceptance of the Proposal:** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

**2.2.4 What agreements are contracts:** An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable

- (a) Competency of the parties
- (b) Freedom of consent of both parties
- (c) Lawfulness of consideration
- (d) Lawfulness of object

## 2.3 *Competency of Parties*

Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

**2.3.1** Categories of persons and bodies who are parties to the contract may be broadly subdivided under the following heads: -

- (a) Individuals
- (b) Partnerships
- (c) Limited Companies
- (d) Corporations other than limited companies

- (a) **Contracts with Individuals:** Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.
- (b) **Contracts with Partnerships:** A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.
- (c) **Contracts with Limited Companies:** Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum

of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.

(d) **Corporation other than Limited Companies:** Associations of individuals incorporated under statutes such as Trade Union Act, Co-operative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

#### **2.4 Consent of both Parties**

Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement, may occur in the following cases: -

- (a) When the misunderstanding relates to the identity of the other party to the agreement;
- (b) When it relates to the nature or terms of the transactions;
- (c) When it related to the subject matter of the agreement.

#### **2.5 Free consent of both Parties**

**2.5.1** The consent is said to be free when it is not caused by coercion, undue influence, fraud, mis-representation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, mis-representation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was caused. A party to a contract, whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract

shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

**2.5.2** In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

**2.5.3** Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

## **2.6 Consideration**

Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration and likewise an act or a promise which is illegal or impossible has no value.

## **2.7 Lawfulness of object**

The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

## **2.8 Communication of an Offer or Proposal**

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Purchaser is not bound to consider a tender, which is received beyond that time.

## **2.9 Communication of Acceptance**

A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

2.9.1 The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due, etc.

### ***2.10 Acceptance to be identical with Proposal***

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof.

If the subject matter of the contract is impossible of fulfilment or is in itself in violation of law such contract is void.

### ***2.11 Withdrawal of an Offer or Proposal***

A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the *date and time of opening of tender*.

No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the purchaser to forfeit the earnest money.

## ***2.12 Withdrawal of Acceptance***

An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance, which reaches the tenderer before the letter of acceptance, will be a valid revocation.

## ***2.13 Changes in terms of a concluded Contract***

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

## ***2.14 Discharge of Contracts***

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged: -

- (a) **By mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.
- (b) **By breach:** In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.
- (c) **By refusal of a party to perform:** On a promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages.
- (d) **In a contract where there are reciprocal promises:** If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

## ***2.15 Stamping of Contracts***

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.)

The Stamp Act provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for such exemption Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which Government would be liable are set out in Section 29 of the Act).

## ***2.16 Authority for Execution of Contracts***

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words "for and on behalf of the President of India" should therefore follow the designation appended below the signature of the officer authorized in this behalf.

**Note 1:** The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time.

**Note 2:** The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules, 1978.

**Note 3:** The DGS&D officers are authorized by the President of India in exercise of the powers conferred by Clause (1) of Article 299 of the Constitution to make contracts for services, supply or work on behalf of the Central Government. DGS&D is also authorized to make similar contracts on behalf of the State Governments where so authorized by the State Governments, and on behalf of Government sponsored companies or corporations or local bodies where so authorized by such companies or corporations or local bodies.

## ***2.17 Contract Effective Date***

The date of commencement of the obligations under the contract on the parties to a contract is referred as the contract effective date. This date should be invariably indicated in each

contract, as per agreed terms and conditions. The Ministries/Departments are advised to set the effective date to be a date after the following:

- (i) Date of signing of the contract.
- (ii) Furnishing of performance bond in terms of performance security.
- (iii) Receipt of Bank Guarantee for advance payment.
- (iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer.
- (v) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 days of the signing of the contract.

### **3.0 Salient Features of the Sales of Goods Act, 1930**

#### **3.1 Scope**

Agreements for the sale of goods are governed by the general principles of the contract law. A contract for sale of goods has, however, certain peculiar features such as transfer of ownership of the goods and quality aspects implied under a contract for sale of goods, and so on, are not covered in the Contract Act. These peculiarities are the subject matter of the provisions of the Sale of Goods Act, 1930. In this act, the two parties to the contract are called “seller” and “buyer”. This act defines goods, for the purpose of applicability of this act, as every kind of movable property, including stocks and shares, growing crops, goodwill, patents, trademarks, electricity, water, gas, and so on—all that can be exchanged for money but not any kind of immovable property (for example, real estate).

#### **3.2 Concept of Transfer of Property (Passing of Title)**

Proprietary (ownership) rights and obligations in “goods” are called legally “title to goods” or “property in goods”. The meaning of property here is different from the common connotation of the word. At what point of time or stage in a contract does this passing of title of (property in) goods happen is laid down by this Act. This ownership of goods is different from 'possession of goods' which means the physical custody or control of the goods. Delivery of goods is only a transfer of 'possession of goods'; and may or may not coincide with the passing of title in goods. This distinction is very important in procurement.

The transfer of property in the goods, from the seller to the buyer, is the essence of a procurement of goods. Therefore, the moment when the property in goods passes from the seller to the buyer is significant for following reasons:

### **3.3 *Ownership***

The moment the property in goods passes, the seller ceases to be their owner and the buyer acquires the ownership. The buyer can exercise proprietary rights over the goods. For example, the buyer may sue the seller for non-delivery of the goods or when the seller has resold the goods, and so on.

### **3.4 *Concept of “Res Prit Domine” -- Risk Follows Ownership***

This concept simply means that, as a general rule, risk follows the ownership, irrespective of whether the delivery (or transfer of possession of goods) has been made or not. If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at that time – irrespective of whosoever is in the “possession of the goods”.

### **3.5 *Action against Third parties***

When the goods are, in any way, damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action (claim, litigation) against them.

### **3.6 *Time at which Property in Goods is Transferred***

The property in goods is transferred to the buyer at such time as the parties to the contract intend this to happen, as recorded in the terms of the contract. This needs neither to coincide with the point when payment is made nor with the delivery of Goods and not even with the point of time when the seller dispatches the goods.

### **3.7 *Document of Title to Goods***

These are the voucher, bill, document, receipt, cash memo, bill of lading, lorry receipt, railway receipt, or any such acknowledgement which proves the ownership of the goods that, in the ordinary course of business, the buyer may receive. These are called documents of title to goods.

### **3.8 *Doctrine of Caveat Emptor***

The Sales of Goods Act lays down this important concept that the buyer must act with due diligence when buying goods; it is not a seller's duty to point out the defects in goods. This is a doctrine which is not in consonance with modern times but, unfortunately, is a legal position. This, however, does not apply if the buyer's consent to buy is obtained by the seller by knowingly concealing the defects which could not have been discovered by the buyer reasonably at the time of procurement. The caveat emptor is also diluted under some implied conditions in a contract for sale.

### ***3.9 Provision of the Act regarding Statutory Variations in Taxes and Duties***

Statutory variations in the taxes and duties (customs duties, excise duty, tax on the sale or procurement of goods), after the making of any contract, has to be borne by the buyer even if there is no such express stipulation in the contract.

## **4.0 Salient Features of the Indian Arbitration & Conciliation Act 1996**

4.1 Indian Arbitration & Conciliation Act 1996 provides for dispute settlement either by a process of conciliation and/or by arbitration. This act is based on a 'United Nation's Commission on International Trade Law Model Arbitration Law' with an object to minimise the supervisory role of courts in the arbitral process and to provide that every final arbitral award is enforced in the same manner, as if it was a decree of the court. It covers both international and domestic arbitration and conciliation.

### ***4.1 Arbitration***

Arbitration is one of the oldest methods of settling civil disputes arising out of and in the course of performance of the contract between two or more persons by reference of the dispute to an independent and impartial third person called the arbitrator, instead of litigating the matter in the usual way through the courts. It saves time and expense, avoids unnecessary technicalities and, at the same time, ensures "substantial justice within limits of the law".

### ***4.2 Arbitrator, Arbitration and Arbitral Award***

The person or persons appointed to determine differences and disputes are called the arbitrator or arbitral tribunal. The proceeding before him is called arbitration proceedings. The decision is called an Award. For the purpose of Law of Limitations, The Arbitration for a particular dispute is deemed to have commenced on the date, on which a request for arbitration is received by the respondent.

### ***4.3 Arbitration Agreement***

It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or non-contractual. The dispute resolution method of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if there is an arbitration agreement (in the form of an arbitration clause or a separate arbitration agreement) in the contract. If there is such an agreement, courts are barred from directly entertaining any litigation in respect of such contracts, and are bound instead to refer the parties to arbitration.

#### ***4.4 Appointment and Composition of Arbitral Tribunal***

Both parties can mutually agree on the number of arbitrators (which cannot be an even number) to be appointed. In case there is no agreement, a single (sole) arbitrator may be appointed. The parties can mutually agree on a procedure for appointing the arbitrator or arbitrators, or else in case of arbitration with three arbitrators, each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator, who will act as a presiding arbitrator. If one party fails to appoint an arbitrator within 30 days, or if the two appointed arbitrators fail to agree on the third arbitrator, then the court may appoint any person or institution as arbitrator. In case of an international commercial dispute, the application for appointment of arbitrator has to be made to the Chief Justice of India. In case of other domestic disputes, the application has to be made to the Chief Justice of the High Court within whose jurisdiction the parties are situated.

#### ***4.5 Challenge to Appointment of Arbitrator***

An arbitrator is expected to be independent and impartial. If there are some circumstances due to which his independence or impartiality can be challenged, he must disclose the circumstances before his appointment. The appointment of an arbitrator cannot be challenged on any ground, except when there is justifiable doubt as to the arbitrator's independence or impartiality or when he does not possess the qualifications for the arbitrator agreed to by the parties. The challenge to appointment has to be decided by the arbitrator himself. If he does not accept the challenge, the arbitration can continue and the arbitrator can make the arbitral award. However, in such a case, application for setting aside the arbitral award can be made to the court, after the award is made by the arbitrator. Thus the other party cannot stall further arbitration proceedings by rushing to court.

#### ***4.6 Conduct of Arbitral Proceedings***

The parties are free to agree on the procedure to be followed for conducting proceedings, location, language of hearings and written proceedings. Failing any agreement, the arbitral tribunal may decide themselves on these aspects. The parties shall be treated with equality and each party shall be given a full opportunity to present its case. The arbitral tribunal shall observe the rules of natural justice but is bound neither by Civil Procedure Code 1908 nor by Indian Evidence Act 1872.

Limitation Act, 1963 is applicable from the date of commencement of arbitral proceedings. Arbitral tribunals have powers to do the following:

Determine admissibility, relevance, materiality and weight of any evidence;

Decide on their own jurisdiction;

Decide on interim measures;

Termination of proceedings; and  
Seek court assistance in taking evidence.

#### **4.7 Arbitral Award**

The decision of the arbitral tribunal is termed as 'arbitral award'. The decision of arbitral tribunal shall be by majority. The arbitral award shall be in writing, mentioning the place and date, and signed by the members of the tribunal. It must state the reasons for the award. A copy of the award should be given to each party. The tribunal can make interim award also. An arbitral award is enforceable in the same manner as if it were a decree of the court.

#### **4.8 Recourse against Arbitral Award**

Recourse to a court against an arbitration award can be made by an application (within three months from the date of the arbitral award), only on the grounds specified in the act, that is, the party was under some incapacity; arbitration agreement was not valid; proper opportunity was not given to present the case; award deal with disputes not falling within the terms of reference of arbitrator; composition of the arbitral tribunal is not as per agreement of parties; subject matter of dispute is not capable of settlement through arbitration under the law or the arbitral award is in conflict with the public policy.

#### **4.9 Conciliation**

This is a new concept added in the Act for settlement of disputes. The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties to reach an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party. This process has not yet come into a common use.

#### **4.10 Changes introduced by the Arbitration and Conciliation (Amendment) Act, 2015**

- 1. Independence, Disqualification and Obligations of arbitrators at the time of appointment**
  - a) Independence, Impartiality and Accountability of Arbitrators:** A fixed fee structure ensures the independence of the arbitral tribunal and also provides a reasonable cost estimate to the parties entering into arbitration. The Amendment Act in the Fourth Schedule prescribes the model fees for arbitrators and the High Courts have been

assigned the responsibility of framing the rules for determination of the fees and the manner of its payment. The model fee varies from Rs 45,000 to Rs 30 Lakhs for various slabs of disputed value from Rs 5 Lakh to above Rs 20 Crore (with a sole arbitrator entitles to 25% extra above the model fee). However it is clarified that such fees shall not be applicable in International Commercial Arbitration and in cases where parties have agreed for determination of fees as per the rules of an arbitral institution.

- b) **Disqualification from appointment:** A long and exhaustive list of specific circumstances which shall act as a bar against any person from being appointed as an arbitrator in a dispute, have been enumerated in the seventh schedule. However, the parties to the dispute have been given the opportunity, after the dispute has arisen, to waive the applicability of the seventh schedule, by mutual written agreement, if they so deem fit. Especially of interest in Public Procurement is disqualification of past or present employees, consultant, advisors or other related business relationship not only with the Procuring Entity but also with any affiliated entity thereof. Thus the earlier practice of appointing serving officers of procuring entity as arbitrator is no more legal.
- c) **Disclosures:** An arbitrator who is approached for appointment is obligated to disclose as per Sixth Schedule of the Act. The declaration as per a set format removes any ambiguity and ensures uniformity:
  - i) **conflict of Interest** the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality as per fifth schedule to the Act for arbitrator.
  - ii) **Time constraints:** An arbitrator shall disclose all circumstances which may affect his ability to deliver an award within 12 months.

## 2. Fast-tracking Arbitration in India

- a) **Award within 12 months:** The arbitral tribunal is statutorily obligated to deliver an award within 12 months from the date when arbitral tribunal enters into reference. The arbitral tribunal is said to have entered upon the reference on the date on which the arbitrator(s) have received notice of their appointment. The award can be delayed by a maximum period of 6 months only under the special circumstances where all parties give their consent to such extension of time. Where the award is not made out within the statutory period the mandate of arbitrators shall automatically terminate. It is open for the courts to extend the time period for

making an award upon receipt of an application by any of the parties. Such extension is to be granted only for sufficient cause and the court in its discretion may impose the following penalties depending on the facts and circumstances of the case:

- i) Reduce the fees of arbitrators by up to 5% for each month of delay.
- ii) Substitute one or all the arbitrators.
- iii) Impose actual or exemplary costs on any of the parties.
- b) **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day to day basis and no adjournments shall be granted without sufficient cause. Provision for imposition of exemplary cost on the party seeking adjournment without sufficient cause has also been made.
- c) **Fast Track Procedure:** The parties to arbitration may choose to opt for a new fast track procedure either before or after the commencement of the arbitration. The award in fast track arbitration is to be made out within six months. Where the Arbitral Tribunal delivers the award within a period of 6 months the arbitral tribunal shall be entitled to additional fees. The quantum of such additional fees shall be determined by the parties. The salient features of the fast track arbitration are:
  - i) Dispute is to be decided based on written pleadings only.
  - ii) Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
  - iii) Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.
  - iv) The parties are free to decide the fees of the arbitrator(s).
- d) **Appointment within 60 days:** Whenever an application for appointment of Arbitrator(s) is moved before a court such application shall be disposed of as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. The court while appointing arbitrators shall confine itself to the examination of the existence of an arbitration agreement.

### 3. Procedural and Jurisprudence simplified

- a) **Arbitration to commence within 90 days of interim relief:** Where the court grants interim relief before the commencement of arbitration, the arbitration must commence within 90 days from such order of interim relief. The court however has been given the authority to extend the period within which the arbitration must commence, if it deems such extension necessary. The Act prohibits courts from entertaining any application for interim relief once the arbitration has entered into

reference, unless the court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

- b) **Powers of Interim Relief in Section 9 also to Arbitral Tribunal:** The parties to arbitration can now directly approach the arbitral tribunal for seeking interim relief on the same grounds as were available to the parties under section 9 of the previous act. Further, the tribunal has now been granted the powers of a court while making interim awards in the proceedings before it.
- c) **Arbitral tribunal not bound to rule in accordance with terms of the contract:** The arbitral tribunal was previously bound to deliver an award in accordance with the terms of the agreement and was required to take into consideration the 'usages of the trade applicable to the transaction'. Vide the Amendment the arbitral tribunal has been freed of the obligation to only rule in accordance with the terms of the agreement. The arbitral tribunal is only required to take the agreement into account while delivering its award and is free to deviate from the terms of the agreement if the circumstances so warrant.
- d) **Act made applicable on International Commercial Arbitration with even seat outside India:** Part I of the act has been made applicable for limited purpose (listed below) on International Commercial Arbitrations even in instances where the seat of the arbitration is outside India, however giving freedom to exclude the applicability the Act by entering into an agreement to this effect:
  - i) Seeking interim relief from courts [section 9]
  - ii) Seeking the assistance of the court in taking evidence [section 27]
  - iii) Appealing against the order of a court where the court refuses to refer the parties to arbitration. [section 37(1) (a)]
  - iv) Restricting the right to second appeal and preserving the right of parties to approach the Supreme Court in appeal. [section 37 (3)]

## 5.0 Salient Features of Competition Act, 2002 relating to Anti-competitive Practices

1. The **Preamble of the Competition Act, 2002**, provides for the establishment of a Commission keeping in view of the economic development of the country to promote and sustain competition in markets; prevent practices having adverse effect on competition; protect consumer interest; and ensure freedom of trade carried on by participants in Indian markets.

2. The Act was amended by **Competition (Amendment) Act, 2007** and again by Competition (Amendment Act), 2009.
3. In India, **Competition Commission of India (“CCI”)**, formulated under the Competition Act is a quasi-judicial and regulatory body entrusted with the task enforcement of the Competition Act, 2002. Apart from specific functions under the Competition Act, 2002 the CCI also has extra-territorial jurisdiction, inquiry into anticompetitive conduct, sector-specific regulatory work, competition advocacy, power of appointment of professional and experts, and procedure for investigation (in terms of regulating its own procedure).
4. Section 8 dealing with **composition of Commission** provides for a chairperson and not less than two and not more than six members which are to be appointed by Central Government. The CCI is vested with inquisitorial, investigative, regulatory, adjudicatory and also advisory jurisdiction. Vast powers have been given to the Commission and under Section 64, the Commission can frame regulations.
5. The **Competition Appellate Tribunal (COMPAT)** is another body entrusted with the responsibility of hearing and disposing of appeals against any direction or decision or order of the CCI. It also adjudicates on compensation claims arising from the findings of the CCI or its own findings on appeals against the CCI orders and passes orders on the recovery of compensation.
6. Any person aggrieved by the order or decision of the CCI may prefer an **appeal** to the Competition Appellate Tribunal ('COMPAT') within 60 days from the date of communication of such order or decision. The second and final appeal under Section 53T lies before the Supreme Court of India from the orders of the COMPAT within a period of 60 days from the date of communication of the order by the COMPAT.
7. CCI may **initiate an inquiry**:
  - a) On its own motion on the basis of information and knowledge in its possession, or
  - b) On receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association, or
  - c) On receipt of a reference from the Central Government or a State Government or a statutory authority
8. The Act provides for Director General office as a separate investigative wing to assist the CCI. The DG looks into the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of

witnesses, examining them on oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.

9. The Act in Section 49 (3) lays down the **advocacy function of CCI** and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI **extra-territorial jurisdiction** over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.
10. Under s. 21 of the Act, any statutory authority can suo motto or on request of a party in the course of a proceeding before it **can make a reference** to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory authority. Under the provisions of the Act, the authority which made reference shall consider the opinion of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI. Section 21A in the same language provides for such reference by CCI to any statutory authority.
11. The key provisions of the Competition Act include:
  - a) Section 3 of the Competition Act, 2002 dealing with anti-competitive agreements;
  - b) Section 4 of the Competition Act, 2002 which discusses abuse of dominance;
  - c) Section 5 and 6 of the Competition Act, 2002 dealing with the regulation of combinations.
12. The term 'agreement', has been defined broadly in the Competition Act. It extends to a mere 'arrangement', 'understanding' or 'action in concert', none of which need be in writing or enforceable by law.
13. Section 3(1) of the Competition Act lays down that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Act prohibits an anti-competitive agreement and declares that such an agreement shall be void.
14. Section 3(3) of the Competition Act deals with the horizontal agreements as it covers the agreements between entities engaged in identical or similar trade of goods or provision of services. It also includes cartels. The section covers:
  - a) Agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise

- b) Practice carried on by any association of enterprises or association of persons
- c) Decision taken by any association of enterprises or association of persons

15. Section 3(3) of the Competition Act enlists four broad classifications of horizontal agreements which are presumed to cause an appreciable adverse effect on competition (AAEC) in India.

- a) Agreements regarding Prices
- b) Agreements regarding Quantity / Quality
- c) Market Allocation
- d) Bid Rigging

16. These four horizontal agreements are not presumed to have appreciable adverse effect on competition and excluded from the provisions of Section 3(3) of the Competition Act, 2002 provided they are entered into by way of joint ventures and increase efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

17. Cartels, by their very nature are secretive and thus it is difficult to find the direct evidence of their presence. The orders of the CCI clearly point that CCI relies on circumstantial evidence, both economic and conduct-based, to reach its decision on the existence of a cartel agreement.

18. The Act provides a definition for bid rigging and it covers agreements having effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding:

- a) Collusive bidding: Agreement between firms to divide the market, set prices or limit production – involves, kickbacks and misrepresentation of independence
- b) Bid Rotation
- c) Bid Suppression
- d) Complementary Bidding
- e) Subcontracting arrangements
- f) Market Allocation

19. The Act gives wide discretion to CCI to frame the remedies to overcome the anticompetitive situation:

- a) Declare Anticompetitive Agreements Void
- b) Impose Heavy Penalties
  - i) Penalty can be up to 10% of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging

- ii) Cartel, a penalty of up to 3 times of its profit for each year of the continuance of such agreement or 10% of its turnover for each year of the continuance of such agreement, whichever is higher
  - a) Order the parties to Cease & Desist
  - b) Modification of agreements
  - c) Remedy Damage to reputation
  - d) Fix Individual Liability
  - e) Grant Interim orders
  - f) Any other order as CCI deems fit

**20. Who can file the information:** Raising issues regarding anti-competitive behaviour for action by CCI under the act is called filing the information:

- a) Any person, consumer or their association or trade association can file information before the Commission.
- b) Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry.
- c) “Person” includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.

**21. What are the issues on which information can be filed?**

- a) The information can be filed on the issues like anti-competitive agreements and abuse of dominant position or a combination.
- b) Class of consumers.

**22. The fee -**

- a) Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,
- b) Rupees 20,000/- (twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one Crores, and
- c) Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.

## **6.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015**

- a) The Act seeks to protect whistleblowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.

- b) Any public servant or any other person including a non-governmental organization may make such a disclosure to the designated agencies i.e. Central or State Vigilance Commission. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.
- c) The Designated Agency cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850 and Commissions of Inquiry Act, 1952.
- d) Similarly, the Amendment Act, 2015, The Bill prohibits the reporting of a corruption related disclosure if it falls under any 10 categories including information related to:
  - i). The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence
  - ii). Records of deliberations of the Council of Ministers
  - iii). That which is forbidden to be published by a court or if it may result in contempt of court;
  - iv). A breach of privilege of legislatures;
  - v). Commercial confidence, trade secrets, intellectual property (if it harms a third party);
  - vi). That relayed in a fiduciary capacity;
  - vii). That received from a foreign government;
  - viii). That which could endanger a person's safety etc.;
  - ix). That which would impede an investigation etc.;
  - x). Personal matters or invasion of privacy.

However, if information related to (ii), (v), (vi), and (x) is available under the Right to Information Act, 2005, then it can be disclosed under the Act.

- e) Any public interest disclosure received by a Competent Authority will be referred to a government authorised authority if it falls under any of the above prohibited categories. This authority will take a decision on the matter, which will be binding.
- f) The Identity of the Complainant must be included in the Complaint or the Disclosure. However the Designated Agency shall conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise. However, the Designated Agency can reveal the

identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the purposes of the enquiry.

- g) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of is complaint to the Designated Agency.
- h) Any person who negligently or with mala fide reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding fifty thousand rupees.
- i) Similarly any disclosure made with mala fide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding thirty thousand rupees.
- j) After receipt of the report or comments relating to the complaint, if the Designated Agency is of the opinion that such comments or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Designated Agency, it shall record the reasons for such disagreement.
- k) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973and Indian Penal Code.
- l) No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Designated Agency.
- m) But, no person is required to furnish any information in the inquiry under this act if such information falls under the 10 categories mentioned before.
- n) It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had made a disclosure under this act.
- o) If any person is victimised or likely to be victimised on the above-mentioned ground, he may contact the Designated Agency and the Designated Agency may pass appropriate directions in this respect. The Designated Agency can even restore status quo ante with respect to the Public

Servant who has made a disclosure. Also, the Designated Agency can pass directions to protect such complainant.

- p) If an offence under this act has been committed by any Head of the Department unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
- q) This Act extends to all the Companies as well. When any offence under this act has been committed by a company, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
- r) No court can take cognizance of any offence under this act save on a complaint made by the Designated Agency. No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence under this act. The High Court shall be the appellate authority in this respect.

## **Appendix 3: Electronic Procurement (e-Procurement) and eAuction**

**1.0 Electronic procurement (e-procurement)** is the use of information and communication technology (specially the internet) by the buyer in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory and efficient procurement through transparent procedures. The Procurement Policy Division, Department of Expenditure, MoF, has vide Office Memorandum no: 10/3/2012-PPC dated January 9, 2014<sup>35</sup> prescribed mandatory publishing of tenders through the e-procurement mode for tenders valued above Rs. 2 lakh.

**2.0 Service Provider:** A service provider is engaged to provide an e-procurement system covering the following:

- i). All steps involved, starting from hosting of tenders to determination of technologically acceptable lowest bidder, are covered;
- ii). The system archives the information and generates reports required for the management information system/decision support system;
- iii). A helpdesk is available for online and offline support to different stakeholders;
- iv). The system arranges and updates the Digital Signature Certificate (DSC) for departmental users; and
- v). Different documents, formats, and so on, for the e-procurement systems are available.

**3.0 Process:** In e-procurement, all processes of tendering have the same content as in normal tendering and are executed, once the necessary changes have been made, online by using the DSC as follows:

- i). **Communications:** Wherever traditional procedures refer to written communication and documents, the corresponding process in e-procurement would be handled either fully online by way of uploading/downloading/emails or automatically generated SMSs or else partly online and partly offline submission. It is advisable to move to full

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<sup>35</sup>[http://eprocure.gov.in/cppp/sites/default/files/instruction\\_contents/INST\\_DOC\\_NO\\_1/eProcurement0901208.4.pdf](http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_1/eProcurement0901208.4.pdf)

submissions online. More details would be available from e-procurement service provider's portal. In e-procurement, the tender fee, EMD and documents supporting exemption from such payments are submitted in paper form to the authority nominated in the NIT, but scanned copies are to be uploaded – without which the bid may not get opened. In future, such payments may be allowed online also;

- ii). **Publishing of tenders:** Tenders are published on the e-procurement portal by authorised executives of Procuring Entity with DSC. After the creation of the tender, a unique "tender id" is automatically generated by the system. While creating/publishing the tender, the "bid openers" are identified – four officers (two from the procuring entity and two from the associated/integrated Finance) with a provision that tenders may be opened by any two of the four officers. As in case of normal tenders, NITs are also advertised in newspapers and posted on the Procuring Entity website. The downloading of the tender may start immediately after e-publication of NIT and can continue till the last date and time of bid submission. The bid submission will start from the next day of e-publication of NIT. In case of limited and PAC/ single tenders, information should also be sent to target vendors/contractors through SMS/email by the portal;
- iii). **Registration of bidders on portal:** In order to submit the bid, bidders have to register themselves online, as a one-time activity, on the e-procurement portal with a valid DSC. The registration should be in the name of the bidder, whereas DSC holder may be either the bidder himself or a duly authorised person. The bidders will have to accept, unconditionally, the online user portal agreement which contains all the terms and conditions of NIT including commercial and general terms and conditions and other conditions, if any, along with an online undertaking in support of the authenticity of the declarations regarding facts, figures, information and documents furnished by the bidder online;
- iv). **Bid submission:** The bidders will submit their techno-commercial bids and price bids online. No conditional bid shall be allowed/ accepted. Bidders will have to upload scanned copies of various documents required for eligibility and all other documents as specified in NIT, techno-commercial bid in cover-I, and price bid in cover-II. To enable system generated techno-commercial and price comparative statements, such statements should be asked to be submitted in Excel formats. The bidder will have to give an undertaking online that if the information/declaration/scanned documents furnished in respect of eligibility criteria are found to be wrong or misleading at any stage, they will be liable to punitive action. EMD and tender fee (demand draft/banker's

cheque/pay order) shall be submitted in the electronic format online (by scanning) while uploading the bid. This submission shall mean that EMD and tender fee are received electronically. However, for the purpose of realisation, the bidder shall send the demand draft/banker's cheque/pay order in original to the designated officer through post or by hand so as to reach by the time of tender opening. In case of exemption of EMD, the scanned copy of the document in support of exemption will have to be uploaded by the bidder during bid submission;

v). **Corrigendum, clarifications, modifications and withdrawal of bids:** All these steps are also carried out online mutadis mutandis the normal tendering process;

vi). **Bid opening:** Both the techno-commercial and price bids are opened online by the bid openers mentioned at the time of creation of the tender online. Relevant bidders can simultaneously take part in bid opening online and can see the resultant bids of all bidders. The system automatically generates a technical scrutiny report and commercial scrutiny report in case of the techno-commercial bid opening and a price comparative statement in case of price bid opening which can also be seen by participating bidders online. Bid openers download the bids and the reports/statements and sign them for further processing. In case of opening of the price bid, the date and time of opening is uploaded on the portal and shortlisted firms are also informed through system generated emails and SMS alerts – after shortlisting of the techno-commercially acceptable bidders;

vii). **Shortfall document:** Any document not enclosed by the bidder can be asked for, as in case of the traditional tender, by the purchaser and submitted by the bidder online, provided it does not vitiate the tendering process;

viii). **Evaluation of techno-commercial and price bids:** This is done offline in the same manner as in the normal tendering process, based on system generated reports and comparative statements;

ix). **Award of contract:** Award of the contract is done offline and a scanned copy is uploaded on the portal. More needs to be done in this regard. The information and the manner of disclosure in this regard must conform to Section 4(1) (b), 4(2) and 4(3) of the RTI Act to enhance transparency and also to reduce the need for filing individual RTI applications. Therefore, the award must be published in a searchable format and be linked to its NIT. Please see Para 8.5 for further details; and

x). **Return of EMD:** EMD furnished by all unsuccessful bidders should be returned through an e-payment system without interest, at the earliest, after the expiry of the final tender validity period but not later than 30 days after conclusion of the contract. EMD of the successful bidder should be returned after receipt of performance security as called for in the contract.

## 4.0 Disposal through e-Auction

### 4.1 *Contractual Legal Aspects of Auction Sale of Scrap*

Ministry/ Departments should decide the calendar for holding auctions/ tenders for groups of lots. A brief summary of this Auction Schedule is given publicity in Newspapers and on websites, indicating how to obtain/ download Auction Catalogues. For each Auction a Catalogue is prepared containing details of Schedule of Lots in the Auction, as well as General and Special Terms and Conditions of Sale (GTC and STC). In contractual terms, Publishing of an Auction catalogue in sale of scrap is equivalent to NIT/ SBD in Tenders for procurement and forms the basis of bids by the purchasers. (Please refer to Para 4.13 below). In e-Auction, the General Conditions of Sale are available on the website and Special Conditions of Sale of each lot is hyperlinked to the Lot Description. In case of Tender/ Physical Auctions Catalogue contains these in printed format.

In Auction, the bidders keep bidding higher and the highest accepted bid is accepted. In such a case a Bid-Sheet is immediately signed by the Seller and Bidder's representative, which along with the delivery order serves as a legal contract document. In eAuction, Bid Sheet is generated with DSCs of Buyer and Seller.

### 4.2 *Legal Status of e-Auction*

e-Auction through eASP is a triangular contract. eASP is a sub-agent of the seller through a standing contract entered between them, which is subject to general terms and conditions (GTC) of eASP. eASP is also a sub-agent of the successful buyer through a standing contract between them which is subject to Buyer Specific Terms and Conditions (BSTC). eASP gets a commission of fixed percentage of sale value from the purchaser directly – which is deducted from the amount payable to the seller. The e-auction sale is governed by GTC, BSTC and Special Terms and& Conditions (STC) of the e-auction. In case of conflict or differences among any provisions of GTC, BSTC and STC, the provisions of STC would prevail. Normally, successful purchasers pay all monies to eASP who, in turn, transfers it to the seller. But the seller may, if desired, negotiate with eASP to accept such payments directly from purchaser.

#### 4.3 ***Creating an Auction Event: Auction Catalogue***

The seller lists items to be auctioned on a specified date. This list is generally called an auction catalogue. Besides the list of items, it also contains any special conditions of contract applicable generally or to specific lots. The following auction details are provided in this list: **Auction Catalogue**

- a) Auction number;
- b) Auction Opening date and time;
- c) Auction Closing date and time;
- d) Type of Auction Ending: Close Ended/ Open Ended
- e) Max Auto Extensions Allowed (5-9)/ Duration of Auto Extensions (90 Secs)
- f) Auction Catalogue Number and Date
- g) Inspection from date;
- h) Inspection closing date;
- i) Seller/Unit name;
- j) Address; Contact details;
- k) Details of the contact person;
- l) Details of ED and Sales Tax (CST/ VAT) in each Lot and TCS (including Surcharge and Edu Cess) for all lots;
- m) Whether Subject to Acceptance (STA) is applicable for bids within (10% or any other %age) of the Reserve Price and
- n) List of lots to be included: (Lot Description is hyper-linked to relevant details containing special terms of lifting, etc)

Auction Sq No:	Lot No	Lot Desc	Quantity	ED/(ST/ Vat)%	Custodian/ Location	Start Time	Close Time	Minimum Increment	STA applicable Y/N
Total Number of Lots =									

The fixed reserve price also has to be uploaded on the portal for each lot, which is kept confidential.

It should also be mentioned if bids below the reserve price up to a percentage can be accepted on an STA basis. The auction details can be posted by eASP but to maintain the sanctity of the reserve

price, it is better for the seller to do so through his login and password. The bidder's queries before the auction will reach seller by e-mail and can be answered online. The seller will not be allowed to edit any item once the auction starts. To attract bidders to the auction to get a higher price, the seller should describe items in detail to include information such as condition and size of the item. The more information is provided, the more bidders will bid with confidence. A photo can also be uploaded. Generally, auctions with images have higher sell-through. Many buyers like to browse through the eASP categories and, therefore, listing the item in the appropriate category increases the likelihood of interested bidders viewing it.

#### **4.4 *Buyer Eligibility***

All prospective e-auction sellers and bidders will have to register themselves by filling in the relevant details online. Bidders have also to pay the specified non-refundable registration fee (usually Rs.10,000) off line. Only registered bidders will be able to access the auction floor. The auction notification will, however, be seen by all internet users. If it is found that the bidder is not adhering to the terms and conditions of the e-auction and also indulging in any malpractices either himself or through his agents, deputies or observer, such a bidder is liable to be blacklisted and appropriate action will be taken as deemed fit by the seller. There are various reports available by which seller can rate a bidder. The seller can restrict or blacklist a buyer from bidding by making a formal request to eASP.

#### **4.5 *Conduct of Auction***

The seller cannot close/cancel an auction once it starts. It can be cancelled/ amended prior to the starting of the auction by making a request for cancellation. The following information will be present on the auction floor web-page:

- i) Opening date and time;
- ii) Closing date and time;
- iii) Item number;
- iv) Item name, hyper-linked to relevant details containing duties, etc., /special terms of lifting, etc.;
- v) Quantity and unit of measurement;
- vi) Location of material/item;
- vii) Last bid or basic price, if any;
- viii) Bidders' bid in Rs./unit; and
- ix) Bid history.

The closing time of an auction shall automatically be extended by period indicated in Auction Catalogue for all auctions if bid continues (e.g., in case the closing time is 5.30 pm of any particular date and if a bidder bids at 5.29 pm then the closing time will be automatically extended). Maximum number of auto extensions are also specified.

Bidders are able to indicate the bid price through their login. A bid, once given, cannot be retracted. Conditional offers will not be accepted/ entertained. Each bidder will have the option to declare his maximum value of bid (which cannot be viewed by other bidders) up to which his automatic bidding will continue.

The seller can monitor auction activity and view the bidding history of the live auctions, reserve prices (reserve price can only be viewed by seller and no one else), and other features. However, the seller will get an automated email once the auction ends with detailed information on the auction (highest bidder, subject to approval items, rejected items).

The respective items will be marked "sold" after closing of the auction when the highest bid is greater than the reserve price and an automatic intimation to the concerned buyer will be sent online to make the payment.

If the bid price matches the limits specified for inclusion in STA, then it shall be shown under the STA category and the seller will be accordingly informed. In case of STA, the seller has to convey the acceptability of the bid amount or otherwise of the bid value to eASP as well as the bidder within three days (excluding holidays) of the close of the auction.

In case of "Sold" or STA a Bid-Sheet is displayed (Annexure 20), indicating the details of the accepted bid, which is printed and shows digital signatures of Auction Supervising Officer and the Bidder. As mentioned before this serves the role of legal Contract document.

If the reserve price has not been met by close of auction, the auction closes without a winning bidder. On the seller's request, eASP will arrange for inclusion of the unsold item in the next auction.

#### **4.6 *Earnest Money Deposit***

EMD is payable within seven calendar days from the date of closing of the e-auction (excluding the date of closing) by the successful bidder. EMD is equivalent to 25 per cent of material value of the accepted lots and 10 per cent of the material value for STA lots in the forms of a demand draft drawn in favour of the authority mentioned in the auction catalogue. On receipt of the EMD by eASP, an acceptance letter/sale order will be issued for sold lots. In case of failure to pay the EMD in time, the login of the party will be deactivated in addition to other actions as deemed fit and the offer will stand withdrawn.

#### **4.7 *Payment of Balance Sale Value (BSV)***

In case of sold/accepted lots and lots taken on STA basis, the balance payment has to be made within 15 calendar days from the date of the acceptance letter/sale order (excluding the date of issue of the acceptance letter/sale order), by way of a demand draft as per the following manner:

- a) Commission percentage as per STC/ GTC/ BSTC to be paid in favour of eASP, by way of demand draft/pay order;
- b) The balance amount (after deducting the EMD and amount payable to eASP) plus applicable VAT/duties, income tax and other charges if any must be paid in favour of authority mentioned in auction catalogue;
- c) In case of delay, a late payment charge @ 1 per cent per week or part thereof will be charged up to two weeks only and thereafter the EMD will stand forfeited without any notice; and
- d) Tax Collected at Source (TCS) at the applicable percentage (presently@ 1 per cent) of the gross value (material value + excise duty + VAT + any other applicable taxes/duties/cess, etc.) may be deducted by the purchaser and a TDS certificate may be given. A surcharge of 10% on TCS and a further Education cess of 3% is leviable on the TCS+ Surcharge.

#### **4.8 *Delivery Order***

eASP will hand over, to the successful buyer, a delivery order authorising the Stores Department to make such a delivery, after getting the requisite material value. The purchaser will approach the seller with the delivery order to allow him to lift the material. The validity of the delivery order is 60 days from the date of the e-auction. The delivery order should show the following particulars:

1. Lot number;
2. Description of material;
3. Purchaser's name and address;
4. Approximate quantity in the lot;
5. Rate at which sold;
6. Value realised;
7. Reference to the cash remittance note, under which the value was remitted to the SPMCIL cashier;
8. Chief cashier or treasurer's receipt note and date; and

9. Amount of loading charges recovered by the store keeper.

**Note:** Columns 1 to 8 will be filled in by eASP and column 9 by the store keeper.

## ***Appendix 4: Management of Public Procurement Function***

### **1.0 Organisation of Procurement Function**

The procurement function should be so organised that procurement executives get an opportunity to develop expertise in a particular market segment, and internal customers may have to deal with only a single point of interface. Thus, work distribution in the procurement entity may be segmented based on markets, but there may be nodal officers to provide a single window interface to internal clients.

In a procurement entity, beside procurement activities, there are also ancillary activities. In a small procurement entity, these ancillary activities may be distributed among various executives. Ancillary procurement activities are:

- a) Administration and management services;
- b) Human resources development and training;
- c) Policy and guidelines;
- d) Procurement performance measurement and management reporting
- e) IT systems and master data management;
- f) Advertising, bidding document sale/ issue/receipt, tender boxes, tender opening, custody of samples;
- g) Direct contracting/local purchase/spot purchase;
- h) Liaison and progressing;
- i) Supplier relations management and registration; and
- j) Legal and arbitration matters.

### **2.0 Management Reporting**

#### ***2.1 Procurement Key Performance Indices and Management Reporting***

As in all management and financial functions, it is possible to measure the pulse of the procurement function by using certain Procurement Key Performance Indices (KPIs). As part of management reporting, these KPIs can be devised to reflect the status of workload, throughput and efficiency of

the procurement function. Some KPIs are given in *Appendix 5: Templates for Management Reports and KPIs*.

## **2.2 Management Reports for Monitoring of Procurement Function**

For proper monitoring and control of the procurement function, regular monthly reports to procurement managers should highlight throughput and stagnation at important milestones of the procurement process. The milestones where workload, throughput and stagnation need to be studied in procurement management are:

- a) Receipt of indent;
- b) Issue of tenders;
- c) Finalisation of tender decision;
- d) Signing of contracts;
- e) Successful performance of the contract; and
- f) Payments for supplies/works/services.

This will highlight stages where urgent intervention is required for efficient procurement to the management. These reports would be compiled by the procuring entity. Templates for management reports are given in *Appendix 5: Templates for Management Reports and KPIs*.

## **3.0 Record Keeping**

**3.1** All procurements done by the organisation are subject to post audit by internal audit, statutory audit and various internal and external vigilance agencies. Hence, all documents related to the procurement should be filed and kept systematically and safely. Files shall be properly numbered on the notes and correspondence side. The period of retention of various types of documents should be laid down. The procuring entity should also maintain following basic records (either in manual or electronic form):

- a) **Item/Asset Master Database:** The heart of the procurement system is the item/asset master database. It contains complete data about an item or asset handled in the past. It contains: code-number; category; description long/short; specification; drawings; trade group of vendors; book-rate; estimated annual consumption; replenishment data; inventory parameters (buffer stock, safety stock levels) – to the extent relevant to goods, works or services;

- b) **Vendor/Contractors Database:** Contains vendor/contractor information such as name; address ; small scale and minority enterprise categorisation; registration data (registration code, trade groups, monetary limits of registration, NSIC or DGS&D registrations); past performance ratings;
- c) **Procurement Register:** Key information at various stages of procurement operations, from receipt of indents till the issue of the contract, is recorded (manually or electronically) in the procurement register. The Procurement register thus enables ascertaining of status of a particular procurement and also overall monitoring of efficiency and throughput of procurement operations;
- d) **Procurement Order Guard Register:** An indexed register with only machine numbered stubs of pages (instead of full pages) is used for this purpose. One ink signed copy of all orders issued by the procuring entity is compulsorily pasted in these stubs in chronological order. This is the most authentic record which is used as a guard and ultimate reference against any tampering/falsification/misreporting of procurement orders; and
- e) **Procurement Order Progress Register:** It contains record of all procurement orders issued and progress of supplies against these contracts. It contains procurement order numbers, vendor/contractor name, brief description of procurement, total value of the order, delivery dates, actual dates of supply, and so on.

## ***Appendix 5: Templates for Management Reports and KPIs***

(Refer Appendix 4, Para 1.3)

**1) Delays by more than one month in floating of tenders against indents received**

Serial No.	Item/Work Code and Description	Quantity, Value Required/ Indented	Date Received in Procuring Entity	Date of Floating Tenders	Remarks

**2) Delays by more than one month in finalising tenders over ideal time (Chapter 7, Para 1.2)**

Serial No.	Tender Number & Opening date	Item/Work Code and Description	Quantity & Value	Date Indent Received in Procuring Entity	Delay as per Ideal Time	Likely Date of Contract/ Remarks

**3) Cases of tenders discharged or proposed for re-tendering**

Serial No.	Tender No. & Opening Date	Item/Work Code and Description	Quantity & Value	Reasons of Discharge/ Retendering	Level of Approval	Is it a Case of Repeat Retendering?	Actions Taken to Avoid Repetition

**4) Delays by over one month in signing contracts after finalisation of tender**

Serial No.	Tender Number & Opening date	Item/Work Code and Description	Quantity & Value	Date of Finalisation of Decision	(Likely) Date of Contract Signing	Remarks

**5) Delays by over three month in Performance of Contract**

Po No & Dt.	Item/Work Code and Description	Contractor Name /Code	Original Delivery /Performance Period/ Date	Delay in Weeks	Indicative Delivery/ Performance Date	Proposed Action/ Remarks

**6) Delays in payment by over three months from due date**

Po No & Dt.	Item/Work Code and Description	Vendor Name /Code	Date of Performance/ Delivery	Due Date of Payment as Per Contract	Date of Signing Payment Order Voucher	Likely Date of Payment	Proposed Action/ Remarks

**7) Top 10 Contractors during the current year**

Serial No.	Vendor Name /Code	Item/Work Code/ Description	Number and Value of Orders			Remarks
			Outstanding as on April 1, ----	Further Ordered Since Then	Value of Supplies since April 1,---	

**8) KPIs during last month/quarter/financial year**

Work Load & Throughput	Number/ Value/ Ratio
Number and Value of Indent pending contract placement	
Number and value of indents received during the month	
Number and value of tenders floated during the month	
Number and value of tenders finalised during the month	
Number and value of contracts signed during the month	
Number and value of payments made for deliveries/performance during the month	
Efficiency of procurement process	
Productivity– number and value wise tenders finalised/on hand per head of staff	
Average time taken for award decision for OTE, GTE, LTE, PAC/ OEM/ STE categories of procurement	
Proportions of tenders on PAC, STE basis with reference to the total number/value of tenders	
Proportions of tenders on limited/selective bidding with reference to the total number/value of tenders	
Proportion of tenders through e-procurement with reference to the total number/value of tenders	

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# ***Manual on Policies and Procedures***

***For Procurement of Goods***

***Beta Draft***

***15-Aug-16***

***Procurement Policy Division***